2-19-2010

Taylor v. AIA Services Corp. Clerk's Record v. 20 Dckt. 36916

Vol. 20 of

In the
SUPREME COURT
of the
STATE OF IDAHO

Reed J. Taylor,

Plaintiff-Appellant,

v.

AIA Services Corporation, et al,

Defendants-Respondents.

CLERK'S RECORD ON APPEAL

VOLUME XX

Appealed from the District Court of the
Second Judicial District of the State of Idaho,
in and for the County of Nez Perce

The Honorable Jeff M. Brudie

Supreme Court No. 36916-2009

RODERICK C. BOND
ATTORNEY FOR PLAINTIFF-APPELLANT

GARY D. BABBITT
ATTORNEY FOR DEFENDANT AIA CORP-RESPONDENTS

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person, Plaintiff-Counterdefendant-Appellant Cross Respondent, v. AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof, BRIAN FREEMAN, a single person; JOLEE DUCLOS, a single person and JAMES BECK and CORRINE BECK, Defendants-Counterclaimants-Respondents-Cross Appellants-Cross Respondents, and CROP USA INSURANCE AGENCY, INC., an Idaho corporation; Defendant-Respondent-Cross Respondent, and 401(k) PROFIT SHARING PLAN FOR THE AIA SERVICES CORPORATION, Intervenor-Cross Appellant-Cross Respondent.	SUPREME COURT NO. 36916-2009 TABLE OF CONTENTS VOLUME XX

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person, Plaintiff-Counterdefendant-Appellant-Cross Respondent, v. AIA SERVICES CORPORATION, an Idaho Corporation; AIA INSURANCE, INC., an Idaho corporation; R JOHN TAYLOR, CONNIE TAYLOR individually and the Community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person and JAMES BECK And CORRINE BECK, Defendants-Counterclaimants-Respondents-Cross Appellants-Cross Respondents, and CROP USA INSURANCE AGENCY, INC., an Idaho corporation; and Defendant-Respondent-Cross Respondent, and 401(k) PROFIT SHARING PLAN FOR THE AIA SERVICES CORPORATION, Intervenor-Cross Appellant-Cross Respondent.	) SUPREME COURT # 36916-2009) INDEX) VOLUME XX

Page

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person, Plaintiff, v. AIA SERVICES CORP., an Idaho corporation; AIA INSURANCE INC., an Idaho corporation, R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof; Defendants.	Case No. CV 2007-00208 ERRATA TO AFFIDAVIT OF JOLEE K. DUCLOS
AIA SERVICES CORPORATION, an Idaho corporation; and AIA INSURANCE, INC., an Idaho corporation, Counter-Claimants,	

3775

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v.

REED J. TAYLOR, a single person,

Counter-Defendant.

CONNIE W. TAYLOR and JAMES BECK,

Counterclaimants,

v.

REED J. TAYLOR, a single person,

Counterdefendant.

401(K) PROFIT SHARING PLAN FOR THE AIA SERVICES CORPORATION

Intervenor.

COMES NOW the Intervenor 401(k) Plan of AIA Services Corporation and files this errata to the Affidavit of JoLee K. Duclos and asks that page 3 to said affidavit be substituted with the attached page 3.

DATED on this 11th day of September, 2008.

Charles A. Brown
Attorney for Intervenor, 401(k) Plan
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3. As alleged by the plaintiff in the Fifth Amended Complaint, said agreement contemplated a promissory note to pay Mr. Reed Taylor $1,500,000.00 in 90 days (down payment note) and $6,000,000.00 plus accrued interest due and payable at the rate of 8.25% (promissory note) over a period of time. Mr. Reed Taylor voted his shares in authorizing AIA Services Corporation to enter into the stock redemption agreement.

4. As alleged by the plaintiff in the Fifth Amended Complaint, said transaction was restructured in 1996. The $6,000,000.00 amount remained unchanged and was not modified. The down payment was not paid in full until June 2001.

5. It is my present understanding and belief that in 1995, when the initial transaction occurred, and when it was restructured in 1996, AIA Services Corporation's financial status was as reflected by the attachments to Connie Taylor's affidavit.

6. When the Stock Redemption Agreement was entered into in July of 1995 with Mr. Reed Taylor, Mr. Reed Taylor voted the shares that he owned in AIA Services Corporation in order to authorize the entering into of the Stock Redemption Agreement between AIA Services Corporation and Mr. Reed Taylor.

7. In March of 1996, the 401(k) Plan purchased 56,500 shares of AIA Services Corporation Preferred C stock for the amount of $565,000.00 ($10.00 a share). In November of 1996, the 401(k) Plan purchased 25,000 shares ($10.00 a share) of AIA Services Corporation Preferred C stock for the amount of $250,000.00. In 1997, the 401(k) Plan purchased 11,000 shares ($10.00 a share) of AIA Services Corporation Preferred C stock for the amount of $110,000.00. The participants in the 401(k) Plan consisted of approximately 120 individuals.

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Attorneys for Plaintiff Reed J. Taylor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROPUSA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof;

Defendants.

Case No.: CV-07-00208

PLAINTIFF REED TAYLOR'S AMENDED MOTION TO DISQUALIFY THE ATTORNEYS AND LAW FIRMS OF HAWLEY TROXELL ENNIS & HAWLEY LLP; CLEMENTS, BROWN & MCNICHOLS, P.A.; AND QUARLES & BRADY LLP

3778

ORIGINAL

I. INTRODUCTION

This Motion to Disqualify involves monumental irreconcilable and nonconsentable conflicts of interest which should be eliminated by disqualifying the responsible Attorneys before further proceedings in this action. Moreover, disqualification is warranted and necessary to ensure fairness to Reed Taylor in prosecuting his claims, uphold the integrity of the legal system, prevent the appearance of impropriety, and prevent appeals by Reed Taylor or any of the defendants based upon the unwaivable conflicts of interest. Consequently, the Court should resolve the conflicts now by disqualifying the Attorneys and order the affected defendants to retain new, separate and independent counsel in this action.

II. RELIEF REQUESTED

Plaintiff Reed J. Taylor ("**Reed Taylor**") moves the Court to disqualify the attorneys and law firms of Hawley Troxell Ennis & Hawley LLP ("**Hawley Troxell**"), Clements, Brown & McNichols, P.A. ("**Clements, Brown & McNichols**"), and Quarles & Brady LLP ("**Quarles & Brady**"). All of the foregoing attorneys and firms are referred to collectively as "**Attorneys**".

III. EVIDENCE RELIED UPON

Reed Taylor's Motion to Disqualify is based upon the Court's File; Reed Taylor's Motion to Disqualify; the Affidavit of Peter Jarvis ("**Jarvis Aff.**"), the Affidavit of W.H. Knight ("**Knight Aff.**"), Jr.; the Affidavit of Steve Calandrillo ("**Calandrillo Aff.**"); the Affidavit of Reed J. Taylor; the Affidavit of Donna J. Taylor; the Affidavit of Roderick C. Bond ("**Bond Aff.**"); the Supplemental Affidavit of Roderick C. Bond ("**Supp. Bond Aff.**"); the Affidavit of Paul Pederson ("**Pederson Aff.**"); the Second Supplemental Affidavit of Roderick C. Bond ("**2nd Supp. Bond Aff.**"); and the Exhibits to the Hearing on Motion for Preliminary Injunction held on March 1, 2007 ("**Hearing**").

IV. FACTUAL BACKGROUND

On July 22, 1995, Reed Taylor agreed to sell his shares back to AIA Services for consideration that included a $6,000,000 promissory note ("**$6M Note**"). *See* Bond Aff., Ex. 1; Bond Aff., p. 3 ¶¶ 6-7; Affidavit of Reed Taylor dated May 9, 2008, Ex. A; Hearing Ex. A, Z, AA & AB. John Taylor personally urged the shareholders of AIA Services to approve the redemption of Reed Taylor's shares. *See* Affidavit of Reed Taylor dated May 9, 2008, Ex. C. In connection with the redemption of Reed Taylor's shares, John Taylor became CEO and entered into an Executive Officer's Agreement, which contained non-compete and non-solicitation provisions (i.e., it was a breach of John Taylor's employment agreement to form and operate CropUSA as a separate entity and to transfer AIA Insurance's long-term employees to CropUSA, among other breaches). *See* Supp. Bond Aff., Ex. 45.

The law firm of Eberle, Berlin, Kading, Turnbow & McKlveen provided Reed Taylor an opinion letter regarding various opinions and warranties pertaining to AIA Services' redemption of Reed Taylor's shares, including that the transaction was legal, had received the required approvals from shareholders and was binding on AIA Services. *See* Bond Aff., Ex. 2, p. 2, ¶ 3; p. 3, ¶ 3. The opinion letter expressly stated that it was based in part on the knowledge of Richard A. Riley, who is now an attorney with Hawley Troxell. *See* Bond Aff., Ex. 2, p. 2, ¶ 2.

In 1996, AIA Services defaulted on its obligations to Reed Taylor and, consequently, the agreements were restructured. *See* Bond Aff., Ex. 3-5. However, Reed Taylor still maintained a security interest in all of the commissions and related receivables of AIA Services and AIA Insurance, the stock of AIA Insurance remained pledged to him, and he maintained the same irrevocable power-of-attorney to vote the shares coupled with an interest. *See* Bond Aff., Ex. 4-5. In addition, Reed Taylor had a security interest in all of the shares of The Universe and the

other subsidiaries of AIA Services and all cash and non-cash distributions related in any way to those shares, i.e., the $1.2 Million Mortgage AIA Services obtained from the estate of The Universe that was later pledged to CropUSA. *See* Bond Aff., Ex. 4, pp. 1-2; Bond Aff., Ex. 32.

During all relevant time periods, Reed Taylor has maintained a perfected security interest in the commissions and related receivables of AIA Services and AIA Insurance. *See* Affidavit of Roderick C. Bond in Support of Plaintiff's Motion for Temporary Restraining Order dated March 28, 2007, Ex. 2. As indicated by the testimony of John Taylor, Hawley Troxell, with full knowledge of AIA Services' obligations to Reed Taylor (i.e., Richard Riley represented AIA in drafting the redemption agreements and was required to received notices of default), represented CropUSA and assisted in various transactions. *See* 2nd Supp. Bond Aff., Ex. 32 and 46.

Fraudulent Transfer Of $1.5 Million To CropUSA And "Fixing" The Books

In August 2004, AIA Insurance allegedly "repurchased" Preferred C Shares in AIA Services (its parent corporation) from CropUSA for $1,510,693. *See* Bond Aff., Ex. 36. CropUSA recognized a gain of $1,489,000 on the alleged sale (even the auditors called the transaction "additional paid in capital"), which indicates that CropUSA was carrying the shares on its financial statement at a value of $21,693 (likely the true value of the shares—essentially worthless). *See* Bond Aff., Ex. 36; 2nd Supp. Bond Aff., Ex. 54, p. 2.

According to the testimony of JoLee Duclos (an officer and board member of both AIA Services and CropUSA at the time of the transaction (*See* 2nd Supp. Bond Aff., Ex. 47-48)), Ms. Duclos allegedly relied only upon the audited financial statements of AIA Insurance as a basis to approve the alleged $1.5 Million stock "repurchase," yet the purported audited financial statement that she allegedly relied upon was not issued until over 6 months after the time of the alleged "repurchase" in August 2004 (thereby making it impossible for her to rely on the

auditor's report as she had alleged earlier in her deposition). *See* Supp. Bond Aff., Ex. 44, p. 122-126; *see also* Affidavit of Donna Taylor, p. 2, ¶ 2. Even CropUSA's purported board meeting minutes that were drafted months after the alleged transaction admit "the marketability of the shares to a third party would be problematic." *See* 2nd Supp. Bond Aff., Ex. 55; Supp. Bond Aff., Ex. 44.

The notes of AIA's former CFO, Marcus McNabb, specifically detail "fixing" AIA's books and his notes reference certain meetings with John Taylor or JoLee Duclos being present discussing "fixing" the books, hardly the type of notes a person would take with no concern about the appropriateness of a transaction. *See* 2nd Supp. Bond Aff., Ex. 56. In addition, on October 9, 2004, John Taylor sent an email to Marcus McNabb stating that the "Services preferred [C] stock is to be cancelled" thereby confirming the true intent of the alleged stock "repurchase." *See* 2nd Supp. Bond Aff., Ex. 56; Supp. Bond Aff., Ex. 36. At his deposition, John Taylor even admitted that had Reed Taylor placed AIA Services in default in 2004, the Preferred C Shares allegedly repurchased for $1.5 Million would have been worthless. *See* 2nd Supp. Bond Aff., Ex. 46, pp. 520-521.

The alleged $1.5 Million stock "repurchase" occurred at a time which AIA Services was not current with payments to Reed Taylor and was inappropriately funded with money in which Reed Taylor held a valid and perfected security interest. *See* Hearing, Ex. AJ; Affidavit of Roderick C. Bond in Support of Plaintiff's Motion for Temporary Restraining Order dated March 28, 2007, Ex. 2.

Reed's $6M Note Matures; Hawley Troxell And Quarles & Brady Issue Unlawful Opinions

Reed Taylor's $6M Note matured on August 1, 2005, and was not timely paid. *See* Bond Aff., Ex. 1, 6 and 13; Hearing Ex. AJ. On October 27, 2006, Hawley Troxell and Quarles &

Brady issued opinion letters to Lancelot Investors Fund, L.P. representing that AIA Insurance had the authority to guarantee CropUSA's $15 Million line-of-credit. *See* Bond Aff., Ex. 18 and 35. The $15 Million loan was signed by John Taylor on behalf of CropUSA and JoLee Duclos on behalf of AIA Insurance, as guarantor. *See* Hearing, Ex. R. However, AIA Insurance's guarantee of the $15 Million loan was expressly prohibited by the Articles of Amendment to the Articles of Incorporation of AIA Services. *See* Bond Aff., Ex. 19. AIA Insurance's guarantee of the $15 Million loan was also in violation of the Bylaws of AIA Services and AIA Insurance because, among other things, the directors were all interested parties through their ownership of shares in CropUSA. *See* Bond Aff., Ex. 9 and 20-22.

Reed Provides A Notice Of Default And Settlement Discussions Take Place

On December 12, 2006, Reed Taylor provided AIA Services with a notice of default of its obligations to timely pay the $6M Note, among other obligations such as the requirement to maintain Reed Taylor as a member of the board of AIA Services (the notice was also provided to Richard Riley as required by the notice provision in the agreements). *See* Bond Aff., Ex. 4, p. 12; Bond Aff., Ex. 6. On December 21, 2006, John Taylor admitted that "Reed Taylor has a security interest in AIA Insurance, Inc. and may have the right to take the actions outlined..." *See* Hearing, Ex. AE. On January 3, 2007, John Taylor admitted that if settlement negotiations failed that he "fully recognize[d] that [Reed] Taylor may take actions he deems appropriate, including calling a special shareholder meeting." *See* Hearing, Ex. AF.

Notwithstanding AIA Services' defaults and subsequent failure to cure, in January 2007, Reed Taylor and John Taylor (on behalf of all three corporations) entered into settlement negotiations with the corporations and AIA and John Taylor were all represented by James Gatziolis and Quarles & Brady. *See* Bond Aff., Ex. 17. When settlement negotiations failed,

Reed Taylor filed suit against John Taylor, AIA Services and AIA Insurance on January 29, 2007. *See* Bond Aff., p. 6, ¶ 15.

On February 1, 2007, AIA Services sent a letter to Reed Taylor (which was drafted by Quarles & Brady and signed by JoLee Duclos) advising him that AIA Services would not honor its contractual obligations. *See* Bond Aff., Ex. 22, p. 6; Supp. Bond Aff., Ex. 44, pp. 203-04. On February 2, 2007, Reed Taylor provided the board of AIA Insurance written demand to recover all services and expenses from CropUSA. *See* Bond Aff., Ex. 11.

On February 5, 2007, Reed Taylor filed his First Amended Complaint, which named additional defendants and asserted claims against John Taylor, Connie Taylor, Bryan Freeman, and JoLee Duclos for fraud, fraudulent conveyance, breaches of fiduciary duties, conversion, director liability, and alter-ego, among other claims. *See* Bond Aff., Ex. 8.

Reed Votes The Shares Of AIA Insurance Pursuant To His Rights And I.C. § 30-1-722

Because all of AIA Insurance's shares were pledged to Reed Taylor as collateral, a shareholder meeting was not necessary for him to vote the shares since he was granted an irrevocable power of attorney coupled with an interest to vote the shares as required by I.C. § 30-1-722. *See* Bond Aff., Ex. 4, p. 7, § 6, Ex. 4, p. 11, § 11.2(a). In addition, AIA Services' failure to timely cure the defaults after receiving Reed Taylor's notice of default on December 12, 2006, resulted in AIA Services' right to vote the shares of AIA Insurance "cease[d] and terminate[d]" and the right to vote the shares were vested "solely and exclusively in [Reed Taylor]." Bond Aff., Ex. 4, p. 7, § 6 (the failure to pay within 10 days of the December 12, 2006, notice of default constitutes a default under the Amended Stock Pledge Agreement (*Id.* at p. 8, § 7(a))).

On February 22, 2007, Reed Taylor exercised his contractual rights (which included an irrevocable power of attorney coupled with an interest) and voted the shares of AIA Insurance

thereby removing John Taylor, JoLee Duclos, and Bryan Freeman as directors and appointing himself as the sole director of AIA Insurance. *See* Bond Aff., Ex. 4 and 7. After appointing himself as the sole director of AIA Insurance, Reed Taylor removed all of the officers of AIA Insurance (including John Taylor) and elected himself as the sole officer of AIA Insurance on February 22, 2007. *See* Bond Aff., Ex. 7.

Reed Moves To Disqualify Mike McNichols And Clements, Brown & McNichols

On February 25, 2007, Reed Taylor advised Clements, Brown & McNichols of his vote of the shares of AIA Insurance and that Mr. McNichols was not authorized to represent AIA Insurance. *See* Bond Aff., Ex. 23. On February 26, 2007, Reed Taylor filed and served his Emergency Motion, wherein he also moved for the disqualification of Michael McNichols and Clements, Brown & McNichols. *See* Bond Aff., Ex. 24. On February 28, 2007, Reed Taylor filed and served additional case law and arguments to support his request for the disqualification of Mr. McNichols and Clements, Brown & McNichols. *See* Bond Aff., Ex. 25.

At the hearing in which Reed Taylor had requested the disqualification of Clements, Brown & McNichols, the Court concluded that conflicts of interest were issues for the Idaho State Bar to resolve. *See* Bond Aff., p. 26, ¶ 66; Court File. Consequently, Reed Taylor did not move for the disqualification of any other Attorneys until now. *See* Bond Aff., p. 26, ¶¶ 66-67.

John Taylor Sends A Letter To Shareholders Seeking Approval Of The Payment Of Fees

On March 16, 2007, John Taylor sent a letter to the shareholders of AIA Services in an apparent attempt to obtain shareholder approval for the payment of attorneys' fees and costs for the individual defendants. *See* Bond Aff., Ex. 12. John Taylor did not disclose the facts and claims alleged in Reed Taylor's First Amended Complaint (i.e., make full disclosure), did not attach a copy of Reed Taylor's most recent Complaint, did not seek approval of any joint retainer

or joint defense agreements, and did not obtain votes only from disinterested shareholders (assuming full disclosure was made). *See* Bond Aff., Ex. 12.

No other correspondence has been sent to AIA Services' shareholders since the letter purportedly seeking the authorization to pay attorney fees dated March 16, 2007. *See* Bond Aff., Ex. 12; Supp. Bond Aff., Ex. 44, pp. 28-29. In addition, the defendants did not obtain consent from Reed Taylor (a secured party and only person with authority to act on behalf of AIA Insurance) or Donna Taylor (the person holding the shares with the highest priority, even over John Taylor). *See* Affidavit of Reed Taylor; Affidavit of Donna Taylor; Bond Aff., Ex. 3-5.

Reed Obtains Partial Summary Judgment On AIA Services' Defaults; Confirms His Vote

On November 15, 2007, Reed Taylor moved for partial summary judgment on AIA Services' default of the $6M Note and Amended Stock Pledge Agreement. *See* Bond Aff., Ex. 13. On February 8, 2008, the Court granted Reed Taylor's Motion for Partial Summary Judgment. *See* Bond Aff., Ex. 14. AIA Services' Motion for Reconsideration and Motion for Permissive Appeal were both denied by the Court and Idaho Supreme Court, respectively. *See* Bond Aff., p. 8, ¶ 20; Court File. The finding of the defaults confirmed that Reed Taylor's February 22, 2007, vote of the shares of AIA Insurance was appropriate and warranted. *See* Bond Aff., Ex. 4 and 7.

Conflicts Of Interest, Inappropriate Board Meetings, And Warnings To Attorneys

In March 2008, the purported boards of AIA Services and AIA Insurance held a joint board meeting wherein lawyers from all of the Attorneys' firms were present. *See* Supp. Bond Aff., Ex. 44, pp. 40-46. One of the purposes of the purported meeting was to direct Jonathan Hally and Clark and Feeney to file a Motion for Partial Summary Judgment against Reed Taylor. *See* Supp. Bond Aff., Ex. 44, pp. 40-46. No resolution has been drafted for this meeting. *See*

Supp. Bond Aff., Ex. 44, p. 43, ll. 1-10. The purported board unanimously voted to have Jonathan Hally and Clark and Feeney file a motion for partial summary judgment against Reed Taylor on the alleged illegality of the redemption. *See* Supp. Bond Aff., Ex. 44, p. 44, ll. 1-20.

Jonathan Hally filed Connie Taylor and James Beck's purported Motion for Partial Summary Judgment against Reed Taylor on April 16, 2008. *See* Bond Aff., p. 17, ¶ 48. The Motion was not supported by applicable case law and was not applicable to the facts in this case, and even if filed in good faith, implicates Richard Riley and Hawley Troxell as witnesses. *See* Affidavit of Reed Taylor dated May 9, 2008; Bond Aff., pp. 17-18, ¶¶ 48-49; Bond Aff., Ex. 2.

When Jonathan Hally and Clark and Feeney filed the motion for partial summary judgment against their own client Reed Taylor, Reed Taylor's counsel contacted the Idaho State Bar and provided a factual background of the case, without providing any names of the Attorneys or parties involved. *See* Bond Aff., p. 26, ¶ 67. The Idaho State Bar advised Reed Taylor's counsel that the issue of disqualification was an issue for the Court. *See* Bond Aff., p. 26, ¶ 67. As a result of the guidance given to Reed Taylor's counsel from the Idaho State Bar, Reed Taylor elected to pursue the disqualification of the attorneys. *See* Bond Aff., p. 26, ¶ 67. However, Reed Taylor's counsel maintained the objections to the legal representation of the defendants throughout the action. *See e.g.,* Bond Aff., Ex. 27 and 29.

On August 3, 2008, Reed Taylor's counsel sent one of many emails regarding conflicts of interest and the associated ramification to the Attorneys:

> We have difficult jobs as attorneys. I know how easy it is to overlook things or make mistakes. However, I have repeatedly advised all of you in writing, through telephone conferences and/or in person of the various conflicts. Even after all my warnings, you have all continued on with the conflicts to the detriment of AIA Services and AIA Insurance. I apologize for this email, but again, I am simply proceeding as my client has directed. He will not continue to allow you all to assist in the decimation of the companies and their remaining assets.

> We have been directed to commence drafting Motions to disqualify your respective firms. I wanted to give each of you an opportunity to withdraw before I file the Motions. Not only will the motions be embarrassing, but Reed will view the time and resources expended and any related damages as damages he may seek from your respective firms. My hope is that you all will simply acknowledge mistakes were made and do the right thing and withdraw from this case. If you still have doubts, I direct you to review RPC 1.7 and 1.13, among others, not to mention the case law and RPCs on assisting in fraudulent acts…I have advised you time and time again that AIA Insurance should have separate counsel…

See Bond Aff., Ex. 22, p. 4-5 (pages are not numbered) (emphasis added). There has been no intentional delay in moving for disqualification. *See* Bond Aff., pp. 26-27, ¶¶ 66-70; Bond Aff., Ex. 24-25; Court File.

On August 7, 2008, the purported boards of AIA Services held a joint board meeting wherein they accepted John Taylor's resignation from the 401(k) Plan (presumably to make the appearance that he is not involved in the intervention by the Plan), inappropriately have interested directors authorize the payment of John Taylor's attorneys' fees and costs in his lawsuit with Donna Taylor, and stated that the Court had approved the corporations' use of a pending $800,000 settlement to pay attorneys' fees, among other issues.[1] *See* Bond Aff., Ex. 41.

On August 14, 2007, CropUSA was also named as a defendant in this action. *See* Bond Aff., p. 8, ¶ 23; Court File. In addition to claims against CropUSA, Reed Taylor's Fifth Amended Complaint alleges additional claims and remedies against John Taylor, JoLee Duclos, Bryan Freeman, Connie Taylor and James Beck relating to the significant corporate malfeasance and waste that has taken place at AIA Services and AIA Insurance. *See* Bond Aff., Ex. 15.

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[1] This settlement constitutes one of the final significant assets of AIA Services and AIA Insurance, and, as with the $1.2 Million Mortgage, are expected to be improperly utilized to pay the Attorneys and for the individual defendants so as to ensure no money remains by the time this action proceeds to trial.

AIA's Present Condition And John Taylor As The Person Making All Of The Decisions

AIA Insurance's business prospects are bleak as most of the commissions it receives are likely to only last for another 2 years since AIA Insurance has not been issuing new policies for years. *See* Affidavit of Reed Taylor, pp. 2-3, ¶ 4; Bond Aff., p. 11, ¶ 30; 2nd Supp. Bond Aff., Ex. 46. This was confirmed by James Gatziolis. *See* Affidavit of Reed Taylor, pp. 2-3, ¶ 4. All of AIA Insurance's employees have been transferred to CropUSA, while the Attorneys have represented otherwise to the Court. *See* Affidavit of Reed Taylor, p. 2, ¶ 2; 2nd Supp. Bond Aff., Ex. 46, pp. 161, 241-242. Throughout this case, the Attorneys have inappropriately argued that AIA Insurance would be irreparably damages if Reed Taylor took control, all the while they knew that the company was being operated improperly and for the benefit of John Taylor and other interested defendants and parties. *See* Court File; Bond Aff., Ex. 42; Supp. Bond Aff., Ex. 44; 2nd Supp. Bond Aff., Ex. 46; Pederson Aff.

Although both Reed Taylor and Donna Taylor have contractual obligations to be on the board of AIA Services until their respective indebtedness is paid in full, the Attorneys and defendants have failed to honor the obligations (*See* 2nd Supp. Bond Aff., Ex. 47), let alone provide notice to either Reed Taylor or Donna Taylor of any board meetings. *See* Affidavit of Reed Taylor, p. 2, ¶ 3; Affidavit of Donna Taylor, p. 2. AIA Services has now ceased all payments to Reed Taylor and Donna Taylor without obtaining permission from the Court. *See* Affidavit of Reed Taylor, p. 2-3, ¶ 4; Affidavit of Donna Taylor, p. 2, ¶ 3; Court File.

In 2001, John and Connie Taylor purchased a parking lot that AIA was required to maintain under the terms of its lease for the purchase price of $6,500, which was paid in cash through the use of AIA's line-of-credit. *See* Pederson Aff., p. 9, ¶ 11. After John and Connie Taylor's inappropriate purchase of the parking lot, they increased the rent on the parking lot from

$3,500 to $15,000 per year and even pre-paid the rent at the end of 2006 for the 2007 calendar year (a total of $30,000 was paid to John Taylor in December 2006).[2] *See* Pederson Aff., p. 9 ¶ 11. In December 2006 (after Reed Taylor provided notice of default), AIA Insurance inappropriately transferred a $95,000 account receivable to CropUSA for funds owed to it by Pacific Empire Radio Corporation. *See* 2nd Supp. Bond Aff., Ex. 58; Pederson Aff.

In his deposition taken on January 28-30, 2008, John Taylor testified when asked who made the decisions for the litigation on behalf of the corporations: "I make those decisions in consultation with the attorneys." *See* Bond Aff., Ex. 42, p. 88, ll. 14-25. The fact that John Taylor inappropriately directs the litigation in this matter was also confirmed by JoLee Duclos (the Secretary of AIA Services, AIA Insurance, and CropUSA and the author of virtually all the board meeting minutes that have been produced in this action), when she testified that John Taylor makes all of the decisions for the corporations with the attorneys. *See* Supp. Bond Aff., Ex. 44, p. 23, ll. 6-17. When questioned about the appropriateness of certain transactions, John Taylor testified that he makes the decision whether a transaction is "appropriate" and that he "ultimately make[s] the decisions for these companies." *See* Bond Aff., Ex. 42, p. 470, ll. 1-21. John Taylor further testified that disinterested board approval was not "necessary" for AIA Insurance's guarantee of CropUSA's $15 Million line-of-credit. *See* 2nd Supp. Bond Aff., Ex. 46, p. 541.

According to JoLee Duclos, the Secretary of AIA Services and AIA Insurance, it has been "several years" since AIA Services has had a shareholder meeting, other than the purported "special" meeting to allegedly approve the payment of attorney fees for present and past

[2] Like the $95,000 owed to AIA Insurance by Pacific Empire Radio Corporation, John Taylor and the other individuals were transferring assets in anticipation of the possible transition in control of AIA Insurance to Reed Taylor as a result of his notice of default dated December 12, 2006.

directors. *See* Supp. Bond Aff., Ex. 44, p. 34, ll. 2-7; Bond Aff., Ex. 12. JoLee Duclos also acknowledged that AIA Services didn't even send financial information or notices of shareholder meetings to shareholders. *See* Supp. Bond Aff., Ex. 44, p. 36, ll. 4-9. All of the above has occurred during times in which AIA Services is and has been insolvent. *See* Hearing, Ex. W, X, AJ, AQ, AR, AS and AT.

General Background On CropUSA

AIA Services began selling crop insurance through its subsidiary formed under the name "AIA Crop Insurance, Inc." *See* 2nd Supp. Bond Aff., Ex. 51. In AIA's business plan drafted in 2000, AIA represented to Reed Taylor and others that "AIA, through its new subsidiary, AIA Crop Insurance, Inc., will begin providing a line of multi-peril crop insurance at the request of the farm associations." *See* 2nd Supp. Bond Aff., Ex. 51 (this document has never been produced in discovery). In 2000, the corporation's name was later changed to CropUSA. *See* 2nd Supp. Bond Aff., Ex. 50. Although no AIA documents have been produced referring to CropUSA as being a subsidiary of AIA, the board meeting minutes of CropUSA dated January 10, 2001, specifically stated that "AIA Services Corporation has declined to continue to operate the company as a subsidiary of AIA and wants the Company to be independent." *See* 2nd Supp. Bond Aff., Ex. 52, p. 1. These minutes were drafted by JoLee Duclos. *Id.* at 2.

CropUSA was formed and operated using AIA Insurance's funds, employees, and assets. *See* Bond Aff., p. 10, ¶ 28; Pederson Aff; 2nd Supp. Bond Aff., Ex. 46. Although AIA Insurance funded CropUSA, JoLee Duclos, the long-time corporate Secretary of AIA Services and AIA Insurance, acknowledged that shareholder approval was not obtained to make CropUSA a separate entity. *See* Supp. Bond Aff., Ex. 44, p. 79, ll. 1-14. Although John Taylor had represented that CropUSA was being developed by AIA Insurance, John Taylor, Connie Taylor,

James Beck and Michael Cashman became the majority holders of the outstanding shares of CropUSA, while AIA and Reed Taylor owned nothing in the entity. *See* Bond Aff., p. 10, ¶ 28; Bond Aff., Ex. 9; 2nd Supp. Bond Aff., Ex. 51 and 59.

Although shareholder or creditor approval was never obtained to operate CropUSA as a separate entity, CropUSA has been referred to as the "exit strategy" for certain shareholders of AIA Services. *See* Bond Aff., pp. 10-11, ¶ 28; Supp. Bond Aff., Ex. 44, p. 79, ll. 1-14; 2nd Supp. Bond Aff., Ex. 46 and 53. In one of the exit strategy letters to select preferred shareholders (*See* 2nd Supp. Bond Aff., Ex. 53 & 59), John Taylor stated the following:

> Over the last few years, AIA's management and directors have been looking for ways to create an exit strategy for your investment in AIA. We had originally planned on taking AIA public, but it is unlikely in the foreseeable future…
>
> With Crop USA, we believe there is a better opportunity for a clearly defined exit strategy. Once the company reaches its goal of $100 million in crop insurance premiums, management believes that Crop USA will have a potential to be acquired or become fully traded.
>
> AIA has been working on a project and market strategy referred to as Crop USA. Crop USA was created by AIA as a property and casualty insurance to members of sponsoring agricultural associations, such as the wheat growers, soybean growers, etc. that are already affiliated with AIA…

2nd Supp. Bond Aff., Ex. 53 (emphasis added). This "exit strategy" letter and the subsequent "exchange" of certain AIA Services Series C Preferred Shares were never approved by Reed Taylor, Donna Taylor or the innocent minority shareholders of AIA Services. *See* 2nd Supp. Bond Aff., Ex. 46. This letter clearly evidences the fact that CropUSA came from AIA. *Id.*

John Taylor acknowledged that expenses were not properly allocated between AIA and CropUSA, including such expenses as electricity, which was never allocated at all. *See* Bond Aff., Ex. 42, p. 294 and 296. Although postage costs exceeded tens of thousands of dollars per year at AIA, postage expenses were never allocated to CropUSA until 2005 or 2006. *See* 2nd

Supp. Bond Aff., Ex. 46, p. 166. Other expenses were allocated unfairly through an alleged Administrative Agreement that was never authorized by the board of AIA Services or AIA Insurance. *See* 2nd Supp. Bond Aff., Ex. 46 and 57. In addition, the salaries subject to the alleged Administrative Agreement were never allocated through any arms-length or legitimate means. *See* 2nd Supp. Bond Aff., Ex. 46, p. 165.

AIA Insurance presently has no employees, as they have all been transferred to CropUSA. *See* 2nd Supp. Bond Aff., Ex. 46, p. 161, 241-242. Although CropUSA and AIA allegedly allocate costs for salaries (*See* 2nd Supp. Bond Aff., Ex. 57), John Taylor testified that there was not a specific method used for allocating salaries. *See* 2nd Supp. Bond Aff., Ex. 46, p. 165. Although it has been consistently one of the largest expenses at AIA for many years, John Taylor's salary was never allocated to CropUSA, even though John Taylor admitting to spending approximately one-half his time working for CropUSA. *See* 2nd Supp. Bond Aff., Ex. 46, pp. 520-521; Hearing Testimony.

From 2001 through 2006, over $2 Million dollars of "related party" transactions have been identified that were not arms-length transactions. *See* Pederson Aff., pp. 8-10; 2nd Supp. Bond Aff., Ex. 46. Since its incorporation, John Taylor has been on the board of CropUSA and also on the boards of AIA Services and AIA Insurance. *See* 2nd Supp. Bond Aff., Ex. 47-48. JoLee Duclos has also been a board member and the Secretary of AIA Services, AIA Insurance and CropUSA for many years. *Id.*

AIA Services and AIA Insurance should be pursuing claims against CropUSA, John Taylor, Connie Taylor, JoLee Duclos, Bryan Freeman, James Beck and Michael Cashman, among others. *See* Bond Aff., p. 11, ¶ 30; Pederson Aff.; Jarvis Aff; Knight Aff.; Calandrillo Aff.; Reed Taylor's Fifth Amended Complaint. All of the above took place during times in

which Hawley Troxell represented both AIA and CropUSA. *See* 2nd Supp. Bond Aff., Ex. 46, pp. 516-519.

General Background On The Involvement Of Clements, Brown & McNichols

After Reed Taylor filed suit, Michael McNichols and Clements, Brown & McNichols purportedly formally appeared in this action on behalf of John Taylor, AIA Services and AIA Insurance. *See* Bond Aff., p. 15, ¶ 40; Court File. On February 22, 2007, Reed Taylor voted the shares of AIA Insurance and appointed himself as the sole officer and director of the company. *See* Bond Aff., Ex. 7. On February 25, 2007, Reed Taylor objected to Mr. McNichols' joint representation, advised Mr. McNichols that he was not authorized to represent AIA Insurance, and demanded the return of funds in which Reed Taylor held a security interest. *See* Bond Aff., Ex. 23.

On March 27, 2007, Reed Taylor's counsel advised Mr. McNichols that his actions were "a continuation of the ongoing conflicts of interest and associated legal ramifications pertaining to [Mr. McNichols'] representation of AIA Services, AIA Insurance, and John Taylor." *See* Affidavit of Roderick C. Bond in Support of Plaintiff's Motion for Temporary Restraining Order dated March 28, 2007, Ex. 1.

On March 28, 2007, Mike McNichols and Clements, Brown & McNichols moved to withdraw from representing AIA Services and AIA Insurance and continue representing John Taylor. *See* Bond Aff., Ex. 26. In Mr. McNichols' Motion to Withdraw, he attempted to brush the obvious significant irreconcilable conflicts aside by arguing:

> ...while there is no current or reasonably anticipated conflict of interest between the corporations and John Taylor, there is a possible future conflict between them and they have agreed that Michael E. McNichols should continue to represent John Taylor but no longer represent the corporations."

See Bond Aff., Ex. 26, pp. 1-2. Mr. McNichols did not indicate whether he obtained the required written informed consent, let alone whether he obtained the required consent from the appropriate authorized and disinterested representatives of the corporations. *See* Bond Aff., Ex. 26, pp. 1-2; Bond Aff., Ex. 7.

On September 20, 2007, Mike McNichols submitted a response in opposition to Reed Taylor's motion to amend his complaint to add additional parties and claims against the corporations, individuals and Michael Cashman, even though Mr. McNichols was purportedly only representing John Taylor. *See* Bond Aff., Ex. 31. As a result of Mr. McNichols and Clements, Brown & McNichols' arguments (and Hawley Troxell), the Court denied Reed Taylor's Motion to Amend and refused to name Michael Cashman. *See* Bond Aff.; Court File.

On July 21, 2008, Reed Taylor's counsel, Michael S. Bissell, sent a letter to the purported boards of AIA Services and AIA Insurance demanding that the boards take action against the attorneys and law firm of Clements, Brown & McNichols for various ethical violations, malpractice, various claims and torts. *See* Bond Aff., Ex. 16.

General Background On The Involvement Of Quarles & Brady

In 2006, Quarles & Brady represented AIA Insurance and CropUSA in obtaining a $15 Million loan for CropUSA and inappropriately provided an opinion letter for the transaction. *See* Bond Aff., Ex. 18. The $15 Million loan was signed by John Taylor on behalf of CropUSA and JoLee Duclos on behalf of the guarantor AIA Insurance. *See* Hearing, Ex. R. AIA Insurance's guarantee of the loan was a violation of AIA Services' articles of incorporation, a violation of AIA Insurance's Bylaws and a violation of AIA Services' Bylaws. *See* Bond Aff., Ex. 19-21.

During settlement negotiations prior to the date Reed Taylor filed his Complaint in this action in January 2007, James Gatziolis and Quarles & Brady purportedly represented AIA

Services and AIA Insurance. *See* Bond Aff., 17. On January 18, 2007, James Gatziolis of Quarles & Brady emailed a settlement proposal to Reed Taylor's counsel wherein he stated "please find a revised proposed term sheet representing AIA's latest offer to resolve the controversies between AIA and Reed Taylor." *See* Bond Aff., Ex. 17.

On January 26, 2007, James Gatziolis responded via email to a counter offer made by Reed Taylor's counsel wherein Mr. Gatziolis confirmed that an alleged advisory board of CropUSA (comprised of the major shareholders of both AIA Services and CropUSA) will "deliberate in person to adequately consider all of the elements of your proposal...the board has unofficially directed the activities of AIA [Insurance], Inc. as well so it is most appropriate for them to consider your proposal." *See* Bond Aff., Ex. 22, p. 10 (pages are not numbered).

After settlement discussions failed, on February 1, 2007, JoLee Duclos executed a letter on behalf of AIA Insurance denying Reed Taylor the right to exercise his contractual rights, which such letter was drafted by Quarles & Brady, as indicated by the Quarles & Brady document stamp at the bottom of the letter. *See* Bond Aff., Ex. 22, p. 6 (pages are not numbered); Supp. Bond Aff., Ex. 44. The February 1, 2007, letter was sent to Reed Taylor's counsel via email from James Gatziolis on the same day. *See* Bond Aff., Ex. 22, p. 7 (pages are not numbered). In the same email, James Gatziolis advised Reed Taylor's counsel that "[t]here will be no meeting of the stockholders of AIA on Monday, February 5, 2007..." *See* Bond Aff., Ex. 22, p. 7 (pages are not numbered).

On February 1, 2007, James Gatziolis emailed Reed Taylor's counsel and proposed that Mike McNichols accept service on behalf of all the defendants. *See* Bond Aff., Ex. 22, p. 8 (pages are not numbered). In a response email, James Gatziolis expressly stated that "[Mr. McNichols] and [Mr. Gatziolis] would both continue to counsel the company" (meaning AIA),

even though Mr. McNichols and his firm would formally appear. *See* Bond Aff., Ex. 22, p. 8 (pages are not numbered).

After CropUSA was named as a defendant, James Gatziolis, Charles Harper and Quarles & Brady formally appeared in this action on behalf of CropUSA, through a *Pro Hac Vice* admission through Hawley Troxell. *See* Bond Aff., p. 14, ¶ 37; Court File. Like Hawley Troxell, Quarles & Brady also represented AIA Insurance and CropUSA pertaining to CropUSA's $15 Million line-of-credit and inappropriately warranted through an opinion letter that AIA Insurance had the authority to guarantee CropUSA's loan. *See* Bond Aff., Ex. 28. Neither Reed Taylor nor Donna Taylor consented to Quarles & Brady's representation of AIA Services and AIA Insurance. *See* Affidavit of Reed Taylor; Affidavit of Donna Taylor.

On June 13, 2008, James Gatziolis sent Reed Taylor's counsel a settlement proposal. *See* Bond Aff., Ex. 37. Although the terms of the proposal are inadmissible to establish liability, they are significant to establish additional conflicts of interest as the Attorneys specifically requested "unconditional releases for each and every defendant, and each of defendant's counsel..." in the first sentence of the offer. *See* Bond Aff., Ex. 37, p. 2 (pages are not numbered) (emphasis added). Under Section 3 of the settlement offer, the Attorneys also requested that "AIA Insurance would deliver releases to all defendants and defendants' counsel." *See* Bond Aff., Ex. 37, p. 2 (pages are not numbered) (emphasis added). Reed Taylor's counsel was instructed to deal exclusively with James Gatziolis during these settlement discussions. *See* Bond Aff., p. 30, ¶ 76 (wherein the Attorneys are implicitly acknowledging their legal exposure and setting forth a new conflict of interest for all of the Attorneys because their interests are no longer 100% behind their clients, but are instead aligned to represent their own interests too).

///

On July 21, 2008, Reed Taylor's counsel, Michael S. Bissell, sent a letter to the purported boards of AIA Services and AIA Insurance demanding that the boards take action against the attorneys and law firm of Quarles & Brady for various ethical violations, malpractice, various claims and torts. *See* Bond Aff., Ex. 16.

On August 4, 2008, Reed Taylor's counsel received an email from Charles Harper of Quarles & Brady stating: "...Quarles & Brady and its attorneys have filed an appearance only on behalf of CropUSA. We do not represent AIA Services or AIA Insurance in this litigation." *See* Bond Aff., Ex. 22, p. 4 (pages are not numbered). However, after an exchange of subsequent emails with Reed Taylor's counsel, it appears that the issue was cleared up when Reed Taylor's counsel reminded Mr. Harper of his firm's "direct representation of AIA in this action" and provided documentation demonstrating the same. *See* Bond Aff., Ex. 22.

General Background On The Involvement Of Hawley Troxell

In 2001, Hawley Troxell was retained by CropUSA to be its adviser and handle SEC matters. *See* 2nd Supp. Bond Aff., Ex. 52, p. 2. Richard Riley and Hawley Troxell represented both AIA and CropUSA throughout the years leading up to this action and after the commencement of this action. *See* 2nd Supp. Bond Aff., Ex. 46; Bond Aff., Ex. 42.

On October 27, 2006, Hawley Troxell represented both AIA Insurance and CropUSA pertaining to a $15 Million line-of-credit and provided an inappropriate opinion letter warranting the guarantee of the loan by AIA Insurance was permissible. *See* Bond Aff., Ex. 35. AIA Insurance's guarantee of the loan was a violation of AIA Services' articles of incorporation, a violation of AIA Insurance's Bylaws and a violation of AIA Services' Bylaws. *See* Bond Aff., Ex. 19-21. According to the testimony of John Taylor, Richard Riley of Hawley Troxell has represented both AIA and CropUSA at various times. *See* 2nd Supp. Bond Aff., Ex. 46, pp. 516-

519.

On April 30, 2007, John Taylor, Connie Taylor and James Beck purportedly held a Joint Meeting of the Boards of AIA Services and AIA Insurance. *See* Bond Aff., Ex. 10. At the purported joint meeting, the boards approved a joint defense agreement, joint retainer agreement, and the payment of $5,000 to each director for every quarter of service on the board, i.e., $20,000 per year. *See* Bond Aff., Ex. 10.

On May 2, 2007, Hawley Troxell was purportedly retained to represent AIA Services and AIA Insurance in place of Mr. McNichols and Clements, Brown & McNichols (although Mr. Babbitt acknowledged that contact had been made prior to May 2). *See* Bond Aff., Ex. 29, p. 4 (pages are not numbered). Gary Babbitt, D. John Ashby, and Hawley Troxell formally purportedly appeared in this action on behalf of AIA Services and AIA Insurance. *See* Bond Aff., pp. 18-19, ¶ 51; Court File; Bond Aff., Ex. 7.

In 2007, Gary Babbitt, D. John Ashby, and Hawley Troxell also formally appeared in this action on behalf of CropUSA. *See* Bond Aff., p. 19, ¶ 52. Later, James Gatziolis, Charles Harper and Quarles & Brady appeared on behalf of CropUSA *Pro Hac Vice*, through Hawley Troxell. *See* Bond Aff., p. 19, ¶ 52. The purported boards or shareholders of AIA Services or AIA Insurance did not consent to the joint representation of CropUSA, neither did Reed Taylor or Donna Taylor. *See e.g.,* Bond Aff., Ex. 10; Affidavit of Reed Taylor; Affidavit of Donna Taylor. On May 11, 2007, Reed Taylor's counsel sent a letter to Gary Babbitt stating in part:

> This letter confirms that you advised me that AIA Insurance and AIA Services do not have claims against John Taylor. I am surprised at your position in this regard as you are exposing your firm to claims from shareholders and other parties, including Reed Taylor. As the counsel for the corporations, you have a duty to bring claims for the benefit of the corporations, their shareholders and their creditors in light of insolvency. Furthermore, it is inappropriate for John Taylor to direct the litigation on behalf of the corporation in light of the substantial claims already alleged against him. I am further surprised that you

> would not require direction and consent from a disinterested board of directors prior to your representation of both corporations...A careful review of the pleadings, briefs, oral testimony and hearing exhibits clearly demonstrates that the corporations have been operated for years for the benefit of John Taylor and others to the detriment of Reed Taylor and other creditors.
>
> In addition, all of the outstanding shares of AIA Insurance are pledged to Reed Taylor. If and when Reed is permitted to exercise his rights under the various agreements and/or Idaho law, AIA Insurance will be bringing claims against John Taylor, Bryan Freeman, and JoLee Duclos. Your firm will also be exposed to claims from Reed Taylor at that time. We will not permit this issue to go unaddressed.

See Bond Aff., Ex. 29, p. 2 (emphasis in original and added).

On September 20, 2007, Gary Babbitt, D. John Ashby and Hawley Troxell submitted a response in opposition to Reed Taylor's motion to amend his complaint to add additional parties and claims, even though they were purportedly only representing the interests of the corporations. *See* Bond Aff., Ex. 30. Hawley Troxell's arguments (and Clements, Brown & McNichols) persuaded the Court to deny naming Mike Cashman (a person intimately involved in the corporate malfeasance and the recipient of a substantial number of shares in CropUSA) as a defendant and deny the additional other new claims, when Hawley Troxell (and Clements, Brown & McNichols) should have been joining Reed Taylor's motion. *See* Bond Aff., pp. 19-20, ¶ 53; Ex. 30. Mr. Cashman is shareholder of AIA Services and became a large shareholder of CropUSA through an elaborate scheme wherein certain "select" shareholders (and no creditors) were permitted to exit their investment in AIA Services. *See e.g.,* Bond Aff., Ex. 9; 2nd Supp. Bond Aff., Ex. 53 and 59.

Throughout this action, Hawley Troxell has not represented the interests of AIA Insurance and AIA Services. *See* Bond Aff., pp. 19-20, ¶ 53; pp. 22-23, ¶ 60; Court File. Richard Riley and Patrick Collins are two lawyers at Hawley Troxell known to represent AIA Insurance and CropUSA in various transactions, including AIA Insurance's guarantee of

CropUSA's $15 Million loan. *See* Bond Aff., Ex. 35.

Without knowledge of this inappropriate pledge, Reed Taylor's counsel moved the Court to enter a preliminary injunction to protect a $1.2 Million Mortgage recently obtained by AIA Services in a settlement. *See* Bond Aff., p. 23, ¶ 61; Bond Aff., Ex. 32. The $1.2 Mortgage was titled in AIA Services' name only, even though AIA Insurance paid "part or all" of the attorneys' fees and costs for the litigation and the Mortgage was a distribution of the estate of The Universe (another subsidiary pledged to Reed Taylor). *See* Bond Aff., Ex. 42, p. 32, ll. 1-24; p. 34, ll. 1-18; Bond Aff., Ex. 4, pp. 1-2.

Gary Babbitt, D. John Ashby and Hawley Troxell failed to disclose to the Court the fact that $1.2 Million Mortgage had been pledged to CropUSA at the hearing on Reed Taylor's Motion for Preliminary Injunction. *See* Bond Aff., p. 23, ¶ 61; Court File. Neither Reed Taylor nor his counsel was provided copies of the pledge of the $1.2 Million Mortgage until April 17, 2008, despite discovery requests seeking such documents.[3] *See* Bond Aff., Ex. 32; p. 24, ¶ 62. Patrick Collins of Hawley Troxell is listed as the person to return the recorded document. *See* Bond Aff., Ex. 32.

In September 2007, Patrick Collins of Hawley Troxell drafted or assisted in the drafting of documents to pledge AIA Services' $1.2 Million Mortgage to CropUSA for the payment of attorney fees and costs. *See* Bond Aff., Ex. 32. According to the testimony of John Taylor, Dick Riley also assisted in the pledging of the $1.2 Million Mortgage to CropUSA. *See* Supp. Bond Aff., Ex. 42, p. 250. The purported loan carried an interest rate of 15% and was secured by the $1.2 Million Mortgage. *See* Bond Aff., Ex. 32. Hawley Troxell represented both AIA Services

[3] The documents pertaining to the $1.2 Million Mortgage and its pledge to CropUSA were only ultimately provided to Reed Taylor's counsel because of Mr. McNichols' good faith and persistence.

and CropUSA in the transaction. *See* Bond Aff., Ex. 42, p. 250; 2nd Supp. Bond Aff., Ex. 46.

On December 18, 2007, Reed Taylor's counsel requested proof that AIA Insurance's guarantee of CropUSA's $15 Million loan was terminated. *See* Bond Aff., Ex. 33. Gary Babbitt and Hawley Troxell responded by stating that if Reed Taylor took action to rescind the guarantee, then Reed Taylor would be sued for tortious interference. *See* Bond Aff., Ex. 33.

On July 21, 2008, Reed Taylor's counsel, Michael S. Bissell, sent a letter to the purported boards of AIA Services and AIA Insurance demanding that the boards take action against the attorneys and law firm of Hawley Troxell for various ethical violations, malpractice, various claims and torts. *See* Bond Aff., Ex. 16. In response, Hawley Troxell retained its own independent counsel, who, on July 31, 2008, inquired about the allegations made in Mr. Bissell's demand letter. *See* Bond Aff., Ex. 34.

Gary Babbitt, D. John Ashby and Hawley Troxell have been asserting arguments against Reed Taylor (including the alleged illegality argument) with full knowledge that such arguments are counter to an opinion letter issued on behalf of AIA Services to Reed Taylor, which was based upon knowledge held by Richard Riley, who is also an attorney with Hawley Troxell. *See* Bond Aff., Ex. 2, p. 2, ¶ 2; Court File. Gary Babbitt, D. John Ashby and Hawley Troxell have also participated in ceasing all payments to Reed Taylor and Donna Taylor without permission from the Court. *See* Affidavit of Reed Taylor; Affidavit of Donna Taylor; Court File.

Lawsuits Against Certain Attorneys And Pending Lawsuits Against Others

On August 18, 2008, Reed Taylor, through his counsel, Michael S. Bissell, filed non-frivolous and non-derivative lawsuits against Hawley Troxell and Clement, Brown & McNichols, which such lawsuits include claims for aiding and abetting, tortious interference, and conversion, among other claims relating to attorneys exceeding their scope of representation.

See Bond Aff., Ex. 38-39. Reed Taylor has also retained Michael S. Bissell to file non-frivolous and non-derivative lawsuits against Clark and Feeney and Quarles & Brady for related claims. *See* Bond Aff., pp. 31-32, ¶ 80. These lawsuits are not based upon litigation strategy. *See* Bond Aff., p. 27, ¶ 68; p. 32, ¶ 81.

As indicated by the expert testimony of Peter R. Jarvis, Reed Taylor's non-frivolous claims against the Attorneys are one additional reason (of many reasons) why the Attorneys should withdraw or be disqualified. *See* Jarvis Aff., pp. 5-6, ¶ 4; p. 7, ¶ 5(d). As a result, the Attorneys have a vested interest in remaining as counsel to "skew" the litigation to protect their interests. *See* Jarvis Aff., pp. 5-6, ¶ 4; p. 7, ¶ 5(d).

It Is Impossible For The Attorneys To Obtain The Required Waivers

The litigation in this matter is, and has been, directed by John Taylor, who is an interested party by way of the individual claims asserted against him by Reed Taylor, the owner of CropUSA shares, the recipient of inappropriate transfers, and a party breaching the terms of his employment contract, among other issues and claims. *See* Bond Aff., Ex. 9, 15 and 42; Supp. Bond Aff., Ex. 44, p. 23, Supp. Bond Aff., Ex. 45. Likewise, the remaining purported board members of AIA Services and AIA Insurance, Connie Taylor and James Beck, are interested parties by way of their ownership of CropUSA shares, the individual claims asserted against them, and the wrongful recipients of funds from AIA Insurance, among other irreconcilable conflicts. *See* Bond Aff., Ex. 9 and 15; Court File.

On April 29, 2008, JoLee Duclos, the Secretary of AIA Services and AIA Insurance, testified that she cannot even recall when the corporations last had an annual shareholder meeting. *See* Supp. Bond Aff., Ex. 44, p. 29-31. John Taylor testified that he makes the decisions and disinterested approval is not "necessary." *See* Bond Aff., Ex. 44; 2nd Supp. Bond

Aff., Ex. 46.

AIA Services owes Reed Taylor over $8,500,000 and is insolvent. *See* Bond Aff., Ex. 15; Hearing Ex. W, X, AJ, AQ, AR, AS and AT. Reed Taylor is the pledgee of all of the outstanding shares of AIA Insurance, the sole person with authority to vote the shares of AIA Insurance, the only legitimate person with authority to make any decisions at AIA Insurance by way of AIA Services' defaults and his prior vote of the shares, and he has not, and will not, consent to any joint representation of AIA Insurance or AIA Services (as the major creditor of an insolvent corporation) with any other defendant, nor will he consent to any joint defense or joint retainer agreements.[4] *See* Affidavit of Reed Taylor, p. 4, ¶¶ 7-10; Bond Aff, Ex. 7.

Donna Taylor, the holder of all the Series A Preferred Shares in AIA Services, has priority over all common shareholders to the remaining assets of AIA Services. *See* Affidavit of Donna Taylor, p. 2, ¶ 2. Donna Taylor has not, and will not, consent to the joint representation of AIA Services, CropUSA, John Taylor and other defendants in this action, nor will she consent to any joint defense or joint retainer agreements. Affidavit of Donna Taylor, p.3, ¶¶ 4-9.

The Attorneys Should Be Disqualified

According to the expert testimony of Peter R. Jarvis, an ethics expert and author of the ethics treatise *The Law of Lawyering* and chapters in the Washington and Oregon Ethics Deskbooks, all of the Attorneys should be disqualified. *See* Jarvis Aff., pp. 5-11, ¶¶ 4-5. Mr. Jarvis also opined, among other things, that "the Law Firms are likely to want to skew the litigation away from their own conduct, or any potential advice of counsel defense, to shift

[4] The fact that all of AIA Insurance's shares were pledged to Reed Taylor and he voted the shares on February 22, 2007, naming himself as the sole officer and director of the company required separate counsel to be appointed for AIA Insurance with strict instructions to safeguard the company and its assets, and to not take any directions or instructions from John Taylor or other interested parties (knowing that duties were owed to Reed Taylor and anything less than handing over control of the company to him would likely result in additional liability).

liability from themselves to one or more of the defendants." *See* Jarvis Aff., p. 7, ¶ 5(d). Mr. Jarvis also opined that the "defenses mounted by AIA Services and AIA Insurance in this case would thus appear to have little or nothing to do with the protection of the interests of AIA Services and AIA Insurance and much if not everything to do with the defense of John Taylor and other individual defendants..." *See* Jarvis Aff., p. 9, ¶ 5(i). Mr. Jarvis further opined that RPC 3.7 would likely be implicated because any one of more of the Attorneys could be forced to testify against their client and "confidentiality and conflict of interest considerations under Idaho RPC 1.6 through 1.10 and RPC 1.13" are implicated even if none of the Attorneys are ever forced to testify against their client. *See* Jarvis Aff., p. 6, ¶ 4(b). Finally, Mr. Jarvis also makes other substantiated opinions regarding the need to disqualify the Attorneys, without even addressing all of the conflicts and issues set forth in Reed Taylor's Motion to Disqualify. *See* Jarvis Aff., pp. 4-11.

Mr. Jarvis' opinion that the Attorneys should be disqualified is also supported by the expert testimony of Steve Calandrillo (a contracts and secured transactions professor of law) and W.H. Knight, Jr. (former in house counsel to a $1.3 Billion Bank, former Dean of University of Washington School of Law, and contracts and commercial law professor), both of whom also opine that Reed Taylor has the contractual right to take possession of AIA Insurance, the contractual right to sell the shares of AIA Insurance, and that Reed Taylor is entitled to possession of the commissions and related receivables of AIA Services and AIA Insurance. *See* Bond Aff., Ex. 3-5; Calandrillo Aff.; Knight Aff.

Donna Taylor (the Series A Preferred Shareholder of AIA Services who has priority over all other preferred and common shareholders of AIA Services and who is entitled to, and not receiving, a seat on AIA Services' board) and Reed Taylor (the pledge of AIA Insurance's stock

and the most significant creditor of AIA Services, who is also entitled to, and not receiving, a seat on AIA Services board) have also specifically requested that the Attorneys be disqualified. *See* Affidavit of Donna Taylor, p. 2, ¶ 2; p. 3, ¶ 9; Affidavit of Reed Taylor, p. 4, ¶ 10.

V. LEGAL AUTHORITY AND ARGUMENT

A. Standard For Disqualification.

"The decision to grant or to deny a motion to disqualify counsel is within the discretion of the trial court." *Weaver v. Millard*, 120 Idaho 692, 696, 819 P.2d 110 (Ct. App. 1991). The remedies available to both clients and non-clients for an attorney's breached duties are specifically addressed in The Restatement (Third) of Law Governing Lawyers:

> For a lawyer's breach of duty owed to the lawyer's client or to a nonclient, judicial remedies may be available through judgment or order entered in accordance with the standards applicable to the remedy awarded, including standards concerning limitation of remedies. Judicial remedies include the following:
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> (8) disqualifying a lawyer from a representation...
> (11) dismissing a claim or defense of a litigant represented by the lawyer...

See Restatement (Third) of Law Governing Lawyers, § 6 (2000); *Hall v. A Corp.*, 453 F.2d 1375 (2ndCir. 1972).

When an ethical conflict sufficiently impacts the just and lawful determination of claims in a lawsuit, the court has a "plain duty to act." *FMC Technologies, Inc. v. Edwards*, 420 F.Supp.2d 1153, 1157 (W.D. WA. 2006). In other words, a court may disqualify counsel on its own motion where sufficient grounds exist. *In re California Canners and Growers*, 74 B.R. 336, 347 (N.D. Cal. 1987).

When a motion to disqualify comes from an opposing party, the motion should be viewed with caution. *Weaver* 120 Idaho at 697. Even if a plaintiff does not hold any special contractual rights or is owed special duties, a plaintiff has standing to disqualify opposing

counsel. *Crown v. Hawkins Co., Ltd.*, 128 Idaho 114, 122-23, 910 P.2d 786 (Ct. App. 1996) (denying motion to disqualify, but acknowledging standing to disqualify opposing counsel); *Eugster v. City of Spokane,* 110 Wn.App. 212, 39 P.3d 380, 388 (2002). However, any doubts should generally be resolved in favor of disqualification. *Cronin v. District Court*, 105 Nev. 635, 781 P.2d 1150, 1153 (Nev. 1989).

Once representation has commenced, a lawyer shall withdraw from the representation of a client if "the representation will result in violation of the rules of professional conduct or the law." RPC 1.16(a)(a). If a court finds that significant risk makes a pending action adverse to the interests of a party, then the court has no discretion to deny a motion to disqualify. *National Medical Enterprises, Inc. v. Godbey*, 924 S.W.2d 123, 133 (Tx. 1996) (emphasis added).

Any delay in filing a motion to disqualify does not result in a waiver when a party fails to demonstrate a clear intention to relinquish the right to challenge a representation. *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 152 P.3d 737 (Nev. 2007).

In *Weaver*, the Idaho Court of Appeals explained the guiding principles regarding disqualification:

> The moving party has the burden of establishing grounds for disqualification. The goal of the court should be to shape a remedy which will assure fairness to the parties and the integrity of the judicial process. Whenever possible, courts should endeavor to reach a solution that is least burdensome to the client.

Weaver, 120 Idaho at 697 (internal citations omitted).

Here, the Attorneys have violated RPC 1.6 through 1.10 and RPC 1.13 (and others), and they should be disqualified in this action. Moreover, other specific grounds necessary to support Reed Taylor's Motion to Disqualify are set forth below, each of which on its own are sufficient to require the disqualification of the applicable Attorneys. Reed Taylor has not delayed in

bringing this motion and has repeatedly advised the Attorneys that action would be taken because of the various conflicts, which have only been exacerbated by the Attorneys over the course of this action.

B. All Of The Attorneys Should Be Disqualified.

1. The Disqualifications Of All Attorneys Are Warranted To Prevent Appeals By One Or More Of The Defendants And Reed Taylor.

Final judgments may be set aside or new trial ordered simply on the grounds that the attorney undertook the improper representation of more than one defendant. *See e.g., Novaro v. Jomar Real Estate Corp.*, 646 N.Y.S.2d 805 (N.Y. App. 1996); *Dunton v. Suffolk County*, 729 F.2d 903, 910 (2nd Cir. 1984) (holding that the improper simultaneous representation of multiple parties required a new trial).

In *Dunton*, the Second Circuit Court of Appeals ordered a new trial because of conflicts of interest and explained the significance of the improper simultaneous representation of multiple parties:

> There are at least two reasons why a court should satisfy itself that no conflict exists or at least provide notice to the affected party if one does. First, a court is under a continuing obligation to supervise the members of its Bar. Second, trial courts have a duty 'to exercise that degree of control required by the facts and circumstances of each case to assure the litigants of a fair trial.'
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> ...In holding that the trial court had a duty to inform [the defendant] of the conflict, we in no way excuse the conduct of the other attorneys here. Attorneys are officers of the court, and are obligated to adhere to all disciplinary rules and to report incidents of which they have unprivileged knowledge involving violations of a disciplinary rule...

Dunton, 729 F.2d at 909 (internal citations omitted).

Thus, it is in the interests of all the parties to this case to ensure conflict-free representation and fairness by disqualifying the Attorneys. The Attorneys should be disqualified to ensure that the trial in this action is fair to all parties and does not result in a reversal from an

any appeals made by Reed Taylor or any of the defendants based upon the irreconcilable and unwaivable conflicts of interest, including, without limitation, the conflicts of interest and ethical dilemmas set forth below.

2. The Attorneys Of Hawley Troxell And Quarles & Brady Must Be Disqualified Because They Have Violated RPC 1.7.

Idaho's Rules of Professional Conduct provide as follows, with respect to conflicts between current clients:

> RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS
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> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
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> (1) the representation of one client will be directly adverse to another client; or
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> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by the personal interests of the lawyer, including family and domestic relationships.

RPC 1.7. If the representation of one client will be adverse to the other or if an attorney's representation of a client may be limited by the attorney's responsibility to another client, a concurrent conflict of interest exists. RPC 1.7(a). "Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails." RPC 1.7, Comment 29. "Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained." RPC 1.7, Comment 29.

In other words, when a party has conflicting interests "antagonistic" to other defendants who could assert claims against the party, the continued representation of all the parties requires disqualification. *Alcantara v. Mendez*, 756 N.Y.S.2d 90, 303 A.D.2d 337, 338 (N.Y. 2003)

(when the pecuniary interests of one party conflicts with the other, continued representation violates the rules of ethics).

Here, there can be no waiver or no joint representation because each of the defendant's interests are irreconcilably divergent and in direct conflict. To date, the Attorneys have inappropriately represented the common interests of John Taylor and other interested parties, to the detriment of AIA Services and AIA Insurance, and consequently, Reed Taylor and Donna Taylor. In violation of RPC 1.7, the Attorneys have engaged in the common representation of preventing Reed Taylor from exercising his contractual rights and disregarding AIA Services and AIA Insurance's valid claims against CropUSA, John Taylor, Michael Cashman, James Beck, JoLee Duclos, Bryan Freeman and Connie Taylor, which only benefits these interested parties.

The Attorneys are not and cannot represent the interests of each client as required. There can be no benefit to AIA Services, who should be pursuing claims against John Taylor, Connie Taylor, James Beck, Michael Cashman, JoLee Duclos, Bryan Freeman, and CropUSA. There can be no benefit to AIA Insurance because it too should be pursing claims against the foregoing parties, its parent corporation and others, let alone the fact that Reed Taylor voted the shares of AIA Insurance and has the express contractual right to control it now. There can be no benefit from all of the defendants participating in an alleged joint defense agreement when they all have irreconcilable and unwaivable conflicts of interest. There can be no benefit for the individual defendants to be subjected to additional claims that flow from the inappropriate simultaneous representation by the Attorneys.

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3. Because Of The Hot Potato Doctrine, All Of The Attorneys Must Withdraw From Representing CropUSA, AIA Services And AIA Insurance.

An attorney may not represent interests adverse to former clients. RPC 1.9. With respect to RPC 1.9, courts have adopted the "Hot Potato Doctrine" which states:

> Generally, a lawyer may not drop one client so that he may continue to represent a more favored one. The weight of authority holds,...that once the lawyers find themselves representing clients with adverse interests, they generally may not drop one client in order to represent the other, preferred client. In other words, a lawyer may not drop a current client like a "hot potato" in order to turn the client into a former client as a means of curing the simultaneous representation of adverse interests. As one commentator explained, courts have agreed that, where a lawyer has terminated representation of a client for the purpose of keeping a more important client happy, counsel will be treated as if he is still the client's present attorney for purposes of determining whether disqualification is warranted.

Flying J. Inc. v. TA Operating Corp., WL 648545 *4 (D. Utah 2008) (internal citations omitted) (emphasis added); *see also GATX/Airlog Co. v Evergreen Inter'l Airlines, Inc.*, 8 F.Supp.2d 1182 (N.D. Cal. 1998); *El Camino Resources, Ltd. v. Huntington Nat. Bank*, WL 2710807 (W.D. Mich. 2007).

Here, the Attorneys must all withdraw because they cannot drop the representation of any one or more of the defendants to remain counsel for another defendant. Moreover, it is impossible for the Attorneys to ever obtain the required written informed consent for the reasons set forth in this Motion, and even if such consents were obtainable from the authorized parties, they should not be permitted because they are unwaivable.

4. Michael McNichols And Clements, Brown & McNichols Must Be Disqualified Because They Violated The Hot Potato Doctrine By Dropping AIA Services And AIA Insurance As Purported Clients To Keep John Taylor As A Client.

Under the same legal authority in Section 3 above, Michael McNichols and Clements, Brown & McNichols is precluded from representing John Taylor in this action and the action

brought by Donna Taylor.

Here, Mr. McNichols and Clements, Brown & McNichols inappropriately dropped AIA Services and AIA Insurance like hot potatoes and could not have received the required waivers, and they must withdraw from representing all parties or they should be disqualified. *See* Jarvis Affidavit.

5. John Taylor's Interests Are Materially Adverse To The Interests Of Michael McNichols and Clements, Brown & McNichols' Former Clients AIA Services And AIA Insurance.

A lawyer may not represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interest of the former client. RPC 1.9.

"When an attorney engages in a conflict of interest on the same matter, her or she is in a position to act on the confidential information learned from the relationship with the first client, whether or not that information is actually disclosed or acted upon in advising the new client." *Damron v. Herzog*, 67 F.3d 211, 215 (9th Cir. 1995).

Here, Mr. McNichols and Clements, Brown & McNichols are representing John Taylor in direct conflict with the interests of AIA Services and AIA Insurance, both of whom are former purported clients. Moreover, Mr. McNichols and Clements, Brown & McNichols are also representing John Taylor in a separate lawsuit brought by Donna Taylor, which is based upon the same fraudulent acts. In doing so, Mr. McNichols and Clements, Brown & McNichols are prejudicing AIA Services and AIA Insurance and their representation will likely have ramifications against claims the corporations will bring against John Taylor and others at such time as disinterested and authorized persons become involved.

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6. The Attorneys Of Hawley Troxell And Quarles & Brady Must Be Disqualified Because They Have Failed To Adhere To The Highest Degree Of Undivided Loyalty Owed To Each Corporation.

An attorneys' duty of undivided loyalty to a client is set forth under RPC 1.7. "[W]here a lawyer represents parties whose interests conflict as to the particular subject matter, the likelihood of prejudice to one party may be so great that misconduct will be found despite disclosure and consent." *Kelly v. Greason*, 23 N.Y.2d 368, 244 N.E.2d 456, 462 (N.Y. 1968). "The primary value at stake in cases of simultaneous or dual representation is the attorney's duty-and the client's legitimate expectation-of-loyalty, rather than confidentiality. Representation adverse to a present client must be measured no so much against the similarities in litigation, as against the duty of undivided loyalty." *Forrest v. Baeza*, 58 Cal.App.4th 65, 74, 67 Cal.Rptr.2d 857 (Cal. 1997). "If a conflict arises after the representation has been undertaken, the lawyer ordinarily must withdraw from the representation..." RPC 1.7, Comment 4.

Disqualification is warranted because it is impossible for Hawley Troxell and Quarles & Brady to simultaneously represent the interests of CropUSA, AIA Services and AIA Insurance, while at the same time giving each corporation their undivided loyalty. Likewise, Clements, Brown & McNichols owes an undivided duty of loyalty to AIA Services and AIA Insurance. Undivided loyalty is particularly important in this case since all of the shares of AIA Insurance are pledged to Reed Taylor (and he should be in control of AIA Insurance), AIA Services is insolvent and owes its duties to its creditors, and both AIA Services and AIA Insurance should be pursuing claims against CropUSA, John Taylor, James Beck, Connie Taylor, Michael Cashman, JoLee Duclos, Bryan Freeman and others.

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7. The Attorneys Should Be Disqualified Because They Have Breached Their Fiduciary Duties Owed To Reed Taylor.

Under Idaho law, when a corporation becomes insolvent, its assets are held in trust for the benefit of the corporation's creditors. *See e.g., Smith v. Great Basin Grain Co.*, 98 Idaho 266, 651 P.2d 1299 (1977). Attorneys may not engage in legal representations that affect the attorney's responsibilities to third parties. RPC 1.7(a)(2).

Here, Reed Taylor is the beneficiary of the assets of the insolvent AIA Services, which are required to be held in trust for Reed Taylor. The Attorneys have purportedly represented or are purportedly representing AIA Services and AIA Insurance (either directly or through an improper joint defense agreement) knowing that their actions are detrimental to the beneficiary of AIA Services' limited remaining assets. As former and/or present counsel for AIA Services, the Attorneys owe the beneficiary of AIA Services' limited remaining assets, Reed Taylor, fiduciary duties to preserve the assets by not representing the interests of John Taylor and other individuals. The Attorneys have breached and are breaching their fiduciary duties owed to Reed Taylor through their improper and unauthorized representation of AIA Services and AIA Insurance, which is further compounded by their other ethical violations.

8. The Attorneys Of Hawley Troxell And Quarles & Brady Must Be Disqualified Because The Confidential Information Obtained From All Three Corporations Cannot Be Protected.

"A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege." RPC 1.7, Comment 30. This ethical principal of confidentiality and the requirement to disqualify attorneys to prevent the release of confidential information also applies to non-clients through joint defense agreements. *See e.g., National Medical Enterprises, Inc. v. Godbey*, 924

S.W.2d 123, 132 (Tx. 1996) ("an attorney's knowledge of a non-client's confidential information that he has promised to preserve is imputed to other attorneys at the same firm.").

AIA Insurance should be under the possession and control of Reed Taylor. AIA Services and AIA Insurance have confidential information that should be protected from CropUSA, John Taylor and others. All three corporations have diverging interests and these diverging interests will inevitably be at issue, whether in other lawsuits, a bankruptcy filing, a petition for receiver, the relinquishment of AIA Insurance to Reed Taylor, or such other possible pending events.

To make matters worse, John Taylor, JoLee Duclos, Bryan Freeman, Connie Taylor and James Beck are all parties to a joint defense agreement with AIA Insurance, AIA Services and CropUSA. Thus, it is impossible for the Attorneys to properly keep and protect each client's confidential information, particularly when such extreme diverging interests exist between the parties to the "Joint Defense Agreement."

9. The Attorneys Should Be Disqualified Because The Conflicts Between CropUSA, AIA Services And AIA Insurance Are Nonconsentable.

"[S]ome conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such an agreement or provide representation on the basis of the client's consent. When representing more than one client, the question of consentability must be resolved as to each client." RPC 1.7, Comment 14.

Here, the conflicts between CropUSA, AIA Services and AIA Insurance are so irreconcilable that such conflicts are nonconsentable under RPC 1.7. For example, AIA Insurance should be suing CropUSA, John Taylor and others to recover the $1.5 Million that was fraudulently/inappropriately conveyed in 2004. Similarly, AIA Insurance should be pursuing claims against CropUSA, John Taylor and others for the millions of dollars of unallocated,

under-allocated, and uncollected funds and assets that were wrongfully transferred to CropUSA. AIA Services should be pursing the same claims as the parent corporation of AIA Insurance. Both corporations should be pursuing claims against the Attorneys. These conflicts, and others, are irreconcilable, nonwaivable, and nonconsentable, which require the disqualification of the Attorneys.

10. The Attorneys Of Hawley Troxell, Clements, Brown & McNichols And Quarles & Brady Must Be Disqualified Because They Are Witnesses.

"A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness..." RPC 3.7.

Here, the Attorneys are witnesses to (including, but not limited to) the following: (1) inappropriate and improper board meetings (including participation of meetings that violate the Articles of Formation and Bylaws of AIA Services and/or AIA Insurance); (2) improper and insufficient disclosure to shareholders as required by law and the bylaws; (3) inappropriate opinion letters to lenders and auditors that have facilitated and/or covered up acts of fraud, breaches of fiduciary duties, conspiracy to defraud creditors and other unlawful acts; (4) inappropriate defense agreements and join retainers; (5) transfers of funds, assets, and resources from AIA Insurance and/or AIA Services to CropUSA and others; (6) the opinion letter issued to Reed Taylor (e.g., Richard Riley would be forced to testify against his client AIA Services and implicate damages for himself and his firm for providing the opinion to Reed Taylor); (7) improper actions taken by the boards of AIA Services and AIA Insurance when they were purportedly representing the organizations; (8) aiding and abetting of John Taylor and others of acts of unauthorized representation, fraud, breaches of fiduciary duties, conspiracy, and conversion (among other claims); (9) the conspiracy to prevent valid claims from being pursued

against certain individual defendants and interested parties (e.g., arguing against naming Mike Cashman as a defendant and not pursuing valid claims against him, when the Attorneys knew that he was the beneficiary of many fraudulent transactions); (10) the titling and pledging of AIA Services' $1.2 Million Mortgage (John Taylor acknowledged that AIA Insurance's funds were utilized to pay for the legal costs that resulted in obtaining the Mortgage and that the Mortgage was derived from the estate of The Universe, in all of which Reed Taylor had a security interest); (11) acceptance of the payment of attorneys fees and costs in violation of the rules of professional conduct (no proper shareholder approval, no shareholder approval at all for James Beck and Connie Taylor, boards not properly seated, etc.); (12) improperly restraining Reed Taylor, when they knew he had the contractual rights and that the corporations were not being operated properly; and (13) acts to intentionally refuse to represent the best interests of AIA Insurance and AIA Services (regardless of whether Reed Taylor was owed any funds or not).[5]

11. The Attorneys Of Hawley Troxell And Quarles & Brady Must Be Disqualified Because They Were Never Retained Or Employed By Duly Authorized Representatives Of AIA Services And AIA Insurance.

"A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." RPC 1.13(a).

When a managing officer has been validly removed, he has no authority to institute legal proceedings in the name of the corporation. *American Center for Education, Inc. v. Cavnar*, 145 Cal.Rptr. 736, (1978) (*citing Templeman v. Grant*, 75 Colo. 519, 534-35, 227 P. 555 (Colo. 1924) ("It is also true that neither the plaintiff Templeman nor the former directors...had any

[5] Moreover, Peter Jarvis succinctly opined that the likelihood of the Attorneys being witnesses was real, but that at the minimum "confidentiality and conflict of interest considerations under Idaho RPC 1.6 through 1.10 and RPC 1.13" are implicated even if the Attorneys were never forced to testify against their client. *See* Jarvis Aff., p. 6, ¶ 4(b).

right or authority to assume to be officers of the...corporation, or to institute legal proceedings in the court...in the name of the corporation.")); *U.S. v. Wolf*, 352 F.Supp.2d 1195 (W.D. Okla. 2004) (the court is not bound to defer to the parties' representations as to their authority to hire counsel); *Safeway Ins. Co. v. Spinak*, 641 N.E.2d 834 (Ill.App. 1994) (holding that the unauthorized filing of a lawsuit constituted a cause of action and subjected the attorneys to exemplary damages).

With full knowledge of the Attorneys and individual defendants, the Attorneys in this action have not been duly retained by AIA Services or AIA Insurance. Reed Taylor and Donna Taylor have not been members of the board of AIA Services as required. Moreover, on February 22, 2007, Reed Taylor voted the shares of AIA Insurance and Reed Taylor is AIA Insurance's only authorized officer and director. *See* Bond Aff., Ex. 7. John Taylor, Connie Taylor and James Beck have not been duly appointed to the board of AIA Services or AIA Insurance, they have not been re-elected through a proper shareholder meeting, and they all have acted inappropriately and in an unauthorized manner in protecting John Taylor and thwarting Reed Taylor from exercising his contractual rights. Moreover, John Taylor and Connie Taylor are both licensed attorneys who have full knowledge of the obligations to properly operate a corporation and who may properly authorize the representation of a corporation.

12. Assuming The Attorneys Are Authorized To Represent The Corporations, The Attorneys Of Hawley Troxell And Quarles & Brady Should Be Disqualified Because They Have Failed To Proceed In The Best Interests Of AIA Services And AIA Insurance.

RPC 1.13(b) expressly states that a lawyer is required to proceed in the bests interests of the corporation:

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> If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and this is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization...

RPC 1.13(b) (emphasis added).

Here, the Attorneys have not proceeded in the best interests of AIA Services and AIA Insurance as required by RPC 1.13(b) or seek guidance from disinterested constituents or the Court. The Attorneys have full knowledge of improper transfers of assets, full knowledge of inappropriate loan guarantees, full knowledge that the board of AIA Services is breaching their fiduciary duties, full knowledge that John Taylor is directing the litigation to his interests and other interested party's interests only, full knowledge that AIA Insurance is pledged to Reed Taylor and he has voted the shares pursuant to his rights and Idaho law, and full knowledge that they have been assisting the individual defendants breach fiduciary duties and commit other torts. The Attorneys have utterly failed in their duties to AIA Services and AIA Insurance. Instead, the Attorneys are inappropriately representing the interests of John Taylor, Connie Taylor, James Beck, Mike Cashman, JoLee Duclos, Bryan Freeman, CropUSA and others.

13. Assuming The Attorneys Were Authorized To Represent The Corporations, All Of The Attorneys Should Be Disqualified Because None Of Them Received The Required Informed Consent From The Appropriate Representative Of AIA Services And AIA Insurance.

A consent to dual representation required by RPC 1.7 mandates that "the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders." RPC 1.13(g).

The Attorneys have entered into a joint defense agreement representing the interests of John Taylor, JoLee Duclos, Bryan Freeman, Connie Taylor, and James Beck (and likely other

unnamed individuals who have been responsible or taken part in the corporate malfeasance and general conspiracy), while disregarding the interests of the corporations. Under RCP 1.13(g), authorization for such a representation is required by the shareholders or other disinterested parties. However, all of the Attorneys failed to obtain shareholder or disinterested party consent of the joint representation, joint defense and joint retainer as required by the Rules of Professional Conduct, let alone the required consent from Reed Taylor and Donna Taylor.

14. It Is Impossible For Any Of The Attorneys From Hawley Troxell, Quarles & Brady Or Clements, Brown & McNichols To Obtain The Required Informed Consent.

"[I]n some circumstances multiple representation may be permissible if both clients are fully informed of potential conflict and the parties consent to the representation. This consent rationale seems peculiarly inapplicable to a derivative action, because the corporation must consent through the directors, who, as in the present case, are the individual defendants." *Forrest v. Baeza*, 58 Cal.App.4th 65, 76, 67 Cal.Rptr.2d 857 (Cal. 1997) *citing* Opinion 842, Association of the City of New York Committee on Professional Ethics (Jan. 4, 1960) (emphasis added).

Here, this action involves a creditor of an insolvent corporation and stock pledgee, Reed Taylor, pursuing claims against the directors of AIA Services and purported directors of AIA Insurance for fraud, breaches of fiduciary duties, conversion, conspiracy and other claims involving corporate malfeasance. Moreover, Reed Taylor's claims are significant in nature (i.e., not business judgment rule claims) and he is the only authorized person to act on behalf of AIA Insurance after he voted the shares on February 22, 2007. Notwithstanding Reed Taylor's vote, the individual defendants are interested by way of their common ownership in CropUSA, their common goals of preventing Reed Taylor and innocent shareholders from discovering and

pursuing claims relating to the significant fraud and corporate malfeasance that has transpired at AIA Services and AIA Insurance, and the common goal of preventing Reed Taylor and others from exercising their contractual rights. Hawley Troxell and Quarles & Brady and individual defendants have a vested interest in keeping the truth from Reed Taylor and the Court, and accomplishing these acts without authority from AIA Services or AIA Insurance.

Similarly, appropriate informed consent could not have been obtained for Clements, Brown & McNichols to withdraw from representing AIA Service and AIA Insurance because the presumed waivers would have been given by unauthorized parties and/or interested parties who were defendants and who should have been the subject of claims by the corporations.

15. The Attorneys Could Not Have Obtained The Required Conflict Waiver Because AIA Services Is Insolvent.

The fiduciary duty owed to creditors of a bankrupt (or in this case insolvent) client constrains a lawyer's ability to waive conflicts of interest. *In re Running Horse, L.L.C.*, 371 B.R. 446, 453 (E.D. Cal. 2007). A lawyer may not enter into a representation that affects the lawyer's representation of a third party. RPC 1.7(a)(2).

Here, AIA Services is and has been insolvent. Although this matter is not in Bankruptcy Court (likely because John Taylor and the other individuals do not want their actions and transactions scrutinized by a bankruptcy trustee), the same principals apply because of AIA Services' insolvency and the requirement to protect the interests of the creditors. Therefore, Reed Taylor's consent would have been required to waive any conflicts of interest associated with multiple representations. However, the Attorneys failed to obtain the required waivers from Reed Taylor.

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16. The Questions Of Obtaining The Appropriate Waivers For The Atttorneys Are Not Even Reached Because The Diverging Interests Between John Taylor, AIA Insurance, AIA Services And CropUSA Are Irreconcilable And Unwaivable.

"If a lawyer reasonably believes representation of a client will be adversely affected by the concurrent representation of another client, the question of waiver is not reached." *State v. Rooks*, 130 Wn.App. 787, 125 P.3d 192, 198 (2005); *see also* RPC 1.8. Even if a waiver is lawfully obtained after full disclosure, the actual conflicts of interest and potential conflicts of interest prevents the "...Court from accepting any waiver which may be given by [the defendant]..." *U.S. v. Edwards*, 39 F.Supp.2d 716, 746 (M.D. La. 1999); s*ee also* Restatement (Third) of The Law Governing Lawyers, § 122 (2000) ("Notwithstanding the informed consent of each affected client or former client, a lawyer may not represent a client if...in the circumstances, it is not reasonably likely that the lawyer will be able to provide adequate representation to one or more of the clients.").

Here, the interests of all three corporations are irreconcilably divergent and there is no possible way that the Attorneys could have reasonably believed that the interests of the corporations would not be adversely affected by joint representation. Moreover, Reed Taylor had voted the shares of AIA Insurance and the individual defendants who consented to any joint representation were all interested parties. Thus, any purported waivers are invalid because they should never have been executed as the representation was not appropriate or properly authorized. Finally, even if authorized, disqualification is warranted because any waiver would be impermissible because of the actual conflicts and serious conflicts of interest in this action.

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17. No Proper Informed Consent Was Obtained By Any Of The Attorneys From Donna Taylor, Reed Taylor, Or Disinterested Officers, Directors Or Shareholders.

Any conflict of interest in representing a majority shareholder and corporation in litigation brought by a minority shareholder was not waived, where only the majority shareholder approved the conflict waiver. *Williams v. Stanford*, 977 So.2d 722, 730 (Fla. 2008).

Michael McNichols and Clements, Brown & McNichols represented AIA Services, AIA Insurance and John Taylor without obtaining consent from the minority shareholders of AIA Services, the Preferred A Shareholder Donna Taylor, or Reed Taylor, the only person authorized to vote the shares of AIA Insurance. Mr. McNichols and Clements, Brown & McNichols knew that Donna Taylor had not been paid (and that her shares had priority over any other shareholder) and knew that Reed Taylor had not been paid and had voted his shares. When Mr. McNichols withdrew to only represent John Taylor, he was again required to have consent from the foregoing parties. However, Mr. McNichols failed to obtain the required consent and is inappropriately representing John Taylor.

Similarly, Gary Babbitt, D. John Ashby and Hawley Troxell are and have been inappropriately representing the interests of John Taylor and AIA Services, AIA Insurance and CropUSA—all of which have irreconcilable diverging conflicts of interest. Any joint representation required the consent of Reed Taylor and Donna Taylor, which Hawley Troxell failed to obtain.

Finally, Quarles & Brady represented AIA Insurance in providing the improper opinion letter to CropUSA's lender, represented AIA attempting to settle the case, and has acted as the "lead" counsel in subsequent settlement discussions. Moreover, Quarles & Brady is admitted to this case through Hawley Troxell, which creates a new set of conflicts by way of Hawley

Troxell's conflicts. *See* Jarvis Aff.

18. The Attorneys Must Be Disqualified Because They Have Aided Each Other In Violating Their Duties Of Loyalty Owed To Their Respective Clients And Former Clients.

Even if there is no evidence that a replacement attorney received confidential information, the attorney must be disqualified if such attorney aids in the violation of an impermissible conflict of interest. *In re California Canners and Growers*, 74 B.R. 336, 347 (N.D. Cal. 1987) (*citing Funds of Funds, Ltd. v. Arthur Andersen & Co.*, 567 F.2d 225, 233 (2nd Cir. 1977) (disqualification was ordered for both the referring firm and referee firm)).

Here, the Attorneys have assisted each other in violating duties of loyalty owed to their respective clients. Under this same rationale, both the referring attorneys and referee attorneys must be disqualified and the Court should order that the Attorneys have no involvement in referring the defendants to new counsel.

19. The Attorneys Cannot Rely Upon The Improper Instructions From John Taylor To Perpetrate A Fraud Against Reed Taylor, AIA Insurance, AIA Services, And It's Innocent Shareholders.

"[A]n attorney may not hide behind a client's instructions in order to perpetrate a fraud against a third party." *The Florida Bar v. Feige*, 596 So.2d 433, 435 (Fla. 1992).

Here, the Attorneys have full knowledge that John Taylor is directly or indirectly controlling the litigation in this action. The Attorneys have full knowledge that John Taylor has not been operating AIA Services or AIA Insurance for the benefit of its shareholders or creditors in light of insolvency, yet the Attorneys have taken instructions from R. John Taylor in violation of the Rules of Professional Conduct and failed to notify disinterested parties or shareholders of the improper acts of R. John Taylor. The Attorneys have full knowledge that their clients' acts (and R. John Taylor) are defrauding Reed Taylor and the innocent shareholders of AIA Services

(to the extent that they have any claims after the moneys owed to Reed Taylor are paid in full).

20. The Joint Defense Agreement And Joint Retainer Agreement Entered Into By The Defendants Violate Ethical Rules For The Conflicting Attorneys Violate Public Policy And Are Unenforceable.

Contracts that violate ethical rules violate public policy and are unenforceable. *Evans & Luptak, PLC v. Lizza,* 251 Mich.App. 187, 650 N.W.2d 364, 370 (Mich. 2002).

Here, AIA Insurance and AIA Services allegedly entered into a Joint Defense Agreement and Joint Retainer Agreement purportedly drafted by Hawley Troxell. *See* Bond Aff., Ex. 10 (joint meeting minutes of the purported boards of AIA Services and AIA Insurance approval a Joint Defense and Retainer). Presumably, CropUSA was also made a party to the Joint Defense and Joint Retainer Agreement, however, this information has not been provided. However, these "Joint" agreements violate ethical rules, were never authorized, and are unenforceable, as are the purported waivers that the Attorneys will presumably argue are obtained in such agreements. Finally, the Court should not permit the defendants to enter into joint defense agreements in the future.

21. Assuming Representation Was Permissible By The Attorneys, They Should Be Disqualified Because They Are Prevented From Jointly Defending The Corporations And The Individual Defendants In This Case.

Conflicts of interest pertaining to the joint representation of one or more organizations and one or my constituents of the organizations are not permissible:

> [A] lawyer may not represent both an organization and a director, officer, employee, shareholder...or other individual or organization associated with the organization if there is a substantial risk that the lawyer's representation of either would be materially and adversely affected by the lawyer's duties to the other.

Restatement (Third) of The Law Governing Lawyers, § 131 (2008).

///

Courts and commentators have consistently stated that an attorney cannot represent an officer or director and the corporation when allegations of fraud are made against the officer or director. Law of Corp. Officers & Dir.: Indemn. & Ins. § 4:5 (2006) ("An attorney may not represent both the board of directors and the corporation where the directors are alleged to have committed fraud."); *Forrest v. Baeza*, 58 Cal. App. 4th 65, 67 Cal. Rptr. 2d 857 (1st Dist. 1997) (An attorney may not represent both corporation and directors in a shareholder suit where the directors are alleged to have committed fraud.); *Musheno v. Gensemer*, 897 F. Supp. 833 (M.D. Pa. 1995) (An attorney representing a corporation and its board of directors in a shareholder suit would be disqualified from representing a corporation, where the complaint alleged fraud and self-dealing by directors, revealing a clear divergence of interests between a corporation and its directors).

Thus, the Attorneys may not directly, or indirectly through any joint defense agreement, represent the interests of John Taylor, Connie Taylor, James Beck, Michael Cashman, JoLee Duclos, Bryan Freeman, AIA Services, AIA Insurance, CropUSA and any other interested organization or individual defendant, particularly those parties with, or who should have, claims of corporate malfeasance against them. By analogy, the Attorneys may also not represent the interests of CropUSA, AIA Services and AIA Insurance because Reed Taylor's Fifth Amended Complaint (and all the evidence above) demonstrates that AIA Services and AIA Insurance should be pursuing claims against CropUSA and the responsible individuals.

22. As The Pledgee Of AIA Insurance And The Only Person Authorized To Vote Its Shares, Reed Taylor Has Not And Will Not Consent To The Joint Representation Of AIA Insurance And Any Other Defendant.

Informed written consent is required for any joint representation. RPC 1.7. Disqualification of any attorney from subsequent representation is for the benefit of the former

client and protects the client's feeling of loyalty owed by the attorney, and can only be waived by the client. *Prospective Investment and Trading Co., Ltd. v. GBK Corp.*, 60 P.3d 520, 525 (Okla. 2002).

Here, Reed Taylor is the only person with the authority to waive any conflicts or consent to the waiver of any conflicts pertaining to the joint representation of AIA Insurance. Reed Taylor has not consented and will not consent to AIA Insurance being represented jointly with any other defendant in this action by Clements, Brown & McNichols, Hawley Troxell or Quarles & Brady. *See also* Affidavit of Donna Taylor (who also does not consent as the priority shareholder of AIA Services).

23. The Attorneys' Representation Results In Violations Of The Rules Of Professional Conduct, Which Requires Their Withdrawal Or Disqualification.

Once representation has commenced, a lawyer shall withdraw from the representation of a client if "the representation will result in violation of the rules of professional conduct or the law." RPC 1.16(a)(a).

Here, in addition to the violations of the Rules of Professional Conduct outlined in this Motion (any of which require withdrawal or disqualification), the Attorneys are aiding and abetting John Taylor, Connie Taylor, James Beck, JoLee Duclos, Bryan Freeman, CropUSA and other interested parties in the commission of breaches of fiduciary duties, fraud, fraudulent conveyances, conspiracy, and other claims and/or offenses violation of RPC 1.16. Consequently, the Attorneys should withdraw or be disqualified.

Thus, for any one or more of the reasons set forth above and any one or more violations of the Rules of Professional Conduct identified or reasonably contemplated by this Motion, the Attorneys should be disqualified.

24. As A Matter Of Law, The Attorneys Should Be Disqualified Because Their Representation Is Fraught With Potential Conflicts.

A lawyer should be disqualified for potential conflicts of interest associated with the representation of multiple parties, which may be decided as a matter of law. *Blecher & Collins, P.C. v. Northwest Airlines, Inc.*, 858 F. Supp. 1442, 1454 (D.C. Cal. 1994) ("Even if an actual conflict of interest did not arise, the multiple representation was fraught with potential conflict...and [the law firm] fails to present *any* evidence that at the time the airlines retained it, their interests were so perfectly aligned that no potential conflicts of interest existed.").

For all of the reasons set forth in this Motion, the Attorneys will face all of the issues raised in this Motion once again if and when Reed Taylor takes control of AIA Insurance. For example, even if Reed Taylor did not take control of AIA Insurance until after a full trial, he would be entitled to pursue all of the claims and conflicts on behalf of AIA Insurance, including, making any appeals and claims pertaining to conflicts of interest and improper legal representation. For these reasons and others, disqualification and the relinquishment of AIA Insurance to Reed Taylor is required to re-align the parties in this action and prevent further litigation and appeals.

Moreover, while the defendants are attempting to make the appearance that their representations are aligned, the likelihood of a future conflict of interest occurring in the joint defense of the defendants also presents a basis for disqualification now, rather than later.

25. The Self-Interests Of The Attorneys Require Their Disqualification.

A lawyer may not engage in a representation that serves his or her self interests and limits the representation of one or more clients. RPC 1.7(a)(2); *see also Hendry v. Pelland*, 73 F.3d 397, 403 (C.A.D.C. 1996) (simultaneously representing multiple parties in violation of the rules

of ethics constitutes a breach of fiduciary duty).

Here, the Attorneys have engaged in simultaneously representing multiple defendants in violation of RPC 1.7 and other rules of ethics, seemingly for the sole purpose of earning fees that they may be required to disgorge later. Similarly, the Attorneys appear to be refusing to withdraw because of their fear of claims by Reed Taylor or their own clients.

26. Disqualification Is Required Because Of The Appearance Of Impropriety.

The appearance of impropriety is a basis to disqualify opposing counsel. *Weaver,* 120 Idaho 692 (Ct. App. 1991). In *Weaver*, the Idaho Court of Appeals explained a four-part test to determine whether an appearance of impropriety alone will give a party standing to interfere with an adverse party's choice of counsel:

> (1) Whether the motion is being made for the purposes of harassing the defendant, (2) Whether the party bringing the motion will be damaged in some way if the motion is not granted, (3) Whether there are any alternative solutions, or is the proposed solution the least damaging under the circumstances, and (4) Whether the possibility of public suspicion will outweigh any benefits that might accrue to continued representation.

Weaver, 120 Idaho at 698 (emphasis added). "The existence of an appearance of impropriety should be determined from the perspective of a reasonable layperson." *Clinard v. Blackwod,* 46 S.W.3d 177, 187 (Tenn. 2001).

Here, the disqualification of the Attorneys is warranted because Reed Taylor is not bringing the motion for harassment purposes, he will be damaged further if the motion is not granted, there are no alternative solutions as the conflicts are irreconcilable, and the public would be highly suspicious of any continued representation (particularly when the conflicts involve corporations with shares held by the public). *See* Affidavit of Reed Taylor, p. 3, ¶ 5; Jarvis Aff. Based upon the perspective of a lay person (or any other person for that matter), the fairness to

Reed Taylor and the significance of maintaining the integrity of the judicial system require the law firms to be disqualified for any one or more of the reasons set forth in this Motion.

Moreover, the Attorneys are defendants in other lawsuits that involve claims of aiding and abetting of the breach of fiduciary duties, fraud, conversion and other claims relating to the Attorneys' exceeding their scope of representation, which are supported at least in part by the same documents and subject matter of this lawsuit. Significantly, the disqualification of the Attorneys is also warranted because they are also witnesses (see Section 12 above).

27. For Any One Or More Of The Reasons Articulated Above, The Court Should Disqualify The Attorneys By Its Own Motion.

A court has the power to disqualify an attorney through its own motion. *In re California Canners and Growers*, 74 B.R. 336, 347 (N.D. Cal. 1987); *see also FMC Technologies, Inc. v. Edwards*, 420 F.Supp.2d 1153, 1157 (W.D. WA. 2006) (courts have a "plain duty to act").

Here, the Court could also disqualify the Attorneys by its own motion under any one or more of the reasons set forth above or such other basis as the Court may deem warranted.

VI. CONCLUSION

For the reasons articulated above, the Court should disqualify the Attorneys and law firms of Hawley Troxell, Quarles & Brady and Clements, Brown & McNichols to resolve the substantial unauthorized, irreconcilable, nonconsentable, and unwaivable conflicts of interest among the defendants and the Attorneys.

In addition, the Court should enter an order requiring each corporation under the control of the individual defendants to retain separate counsel and not participate in any defense or "joint defense agreements" with John Taylor or other interested parties. Finally, the Court should order that the Attorneys have no participation in referring any of the defendants to new counsel.

DATED: This 24th day of September, 2008.

SMITH, CANNON & BOND PLLC
CAMPBELL, BISSELL & KIRBY PLLC

By: _____
Roderick C. Bond
Ned A. Cannon
Michael S. Bissell
Attorneys for Plaintiff Reed J. Taylor

CERTIFICATE OF SERVICE

I, Roderick C. Bond, declare that, on the date indicated below, I served a true and correct copy of Amended Notice of Hearing and Reed Taylor's Amended Motion to Disqualify the Attorneys and Law Firms of Hawley Troxell, Quarles & Brady and Clements, Brown & McNichols on the following parties via the methods indicated below:

David A. Gittins
Law Office of David A. Gittins
P.O. Box 191
Clarkston, WA 99403
Attorney for Defendants JoLee Duclos and Bryan Freeman

Via:

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Michael E. McNichols
Clements Brown & McNichols
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Lewiston, ID 83501
Attorney for R. John Taylor

Via:

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David R. Risley
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Attorney for Connie Taylor, James Beck and Corrine Beck

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D. John Ashby
Hawley Troxell Ennis & Hawley LLP
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Attorneys for AIA Services, AIA Insurance, and Crop USA Insurance Agency

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Charles A. Brown
Attorney at Law
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Attorneys for AIA Services 401(k) Plan

Via:
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( ) Hand Delivered
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Signed this 24th day of September, 2008, at Lewiston, Idaho.

Roderick C. Bond

CV CLR

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PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
NEZ PERCE COUNTY

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Attorneys for Plaintiff Reed J. Taylor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof;

Defendants.

Case No.: CV-07-00208

AMENDED NOTICE OF HEARING ON PLAINTIFF REED TAYLOR'S MOTION TO DISQUALIFY THE ATTORNEYS AND LAW FIRMS OF HAWLEY TROXELL ENNIS & HAWLEY LLP; CLEMENTS, BROWN & MCNICHOLS, P.A.; AND QUARLES & BRADY LLP

3834

ORIGINAL

Plaintiff Reed Taylor has scheduled for hearing, with oral argument, Reed Taylor's Motion to Disqualify the Attorneys and Law Firms of Hawley Troxell Ennis & Hawley LLP, Clements, Brown & McNichols, P.A., and Quarles & Brady LLP, to be heard at **9 a.m., Pacific Time**, on Monday, **October 20, 2008**, or as soon as possible thereafter, at the Nez Perce County Courthouse, 1230 Main Street, Lewiston, ID 83501.

DATED: This 24th day of September, 2008.

SMITH, CANNON & BOND PLLC
CAMPBELL, BISSELL & KIRBY PLLC

By: _____
Roderick C. Bond
Ned A. Cannon
Michael S. Bissell
Attorneys for Plaintiff Reed J. Taylor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person, Plaintiff, v. AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof, BRIAN FREEMAN, a single person; and JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho corporation; and JAMES BECK and CORRINE BECK, individually and in the community property comprised thereof; Defendants.	CASE NO. CV07-00208 ORDER SETTING HEARING ON MOTION TO DISQUALIFY AND ORDER OF STAY

On September 11, 2008, the Court had before it for hearing numerous motions filed by the parties. For the reasons stated on the record, the Court finds it must hear Plaintiff's Motion to Disqualify the Attorneys and Law Firms of Hawley Troxell Ennis & Hawley LLP and Clements, Brown & McNichols, P.A., and enter a ruling on the motion before any adversarial

3836

motions are heard in this matter. Therefore, the Court will hear oral arguments on the Motion on **October 20, 2008 at 9:00 a.m. Pacific Daylight Time**.

IT IS THE FURTHER ORDER of the Court that all pending motions in the above-entitled matter are STAYED until the Court enters it ruling on Plaintiff's Motion to Disqualify, after which the Court will establish the time or times for hearing pending motions.

Dated this 24 day of September 2008.

JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SETTING HEARING was:

_____ hand delivered via court basket, or

__V__ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 24th day of September, 2008, to:

Roderick C. Bond
Ned A. Cannon
Smith and Cannon
508 Eighth St
Lewiston, ID 83501

David Risley
Randall, Blake & Cox
PO Box 446
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PATTY O. WEEKS, CLERK

By: _____
Deputy

CLERK OF DISTRICT COURT SECOND JUDICIAL DISTRICT NEZ PERCE COUNTY • STATE OF IDAHO • EX-OFFICIO AUDITOR AND RECORDER

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CLERK OF THE DIST. COURT

DEPUTY

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D. John Ashby, ISB No. 7228
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Attorneys for AIA Services Corporation, AIA Insurance, Inc., and CropUSA

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof,

Defendants.

AIA SERVICES CORPORATION, an Idaho corporation; and AIA INSURANCE, INC., an

Case No. CV-07-00208

MOTION TO SUBMIT DOCUMENTS *IN CAMERA* AND UNDER SEAL

3839

Idaho corporation,

Counterclaimants,

vs.

REED J. TAYLOR, a single person,

Counterdefendant.

AIA Services Corporation and AIA Insurance, Inc., by and through their counsel of record, Hawley Troxell Ennis & Hawley LLP, hereby move this Court for permission to submit certain privileged documents under seal for *in camera* inspection.

I. ARGUMENT

Reed Taylor's Motion to Disqualify the Attorneys and Law Firms of Hawley Troxell Ennis & Hawley LLP; Clements Brown & McNichols, P.A.; and Quarles & Brady LLP (the "Motion to Disqualify") calls into question issues related to Hawley Troxell's representation of AIA Insurance, AIA Services and CropUSA. For example, Reed Taylor's Motion to Disqualify references a joint defense agreement and questions whether AIA Insurance, AIA Services and CropUSA have waived certain potential conflicts of interest. Some of the issues raised by Reed Taylor's Motion to Disqualify are addressed in certain engagement agreements and conflict waivers entered into between Hawley Troxell and its clients, conflict waivers by other defendants in this litigation, standstill and tolling agreements tolling and preserving potential claims between or among the co-defendants, and a joint defense agreement in which the defendants agree that, because of their common interest in defending against Reed's claims, they should share defense information. However, those documents (collectively, the "Representation Agreements") are protected by attorney-client privilege, common interest privilege and attorney work product privilege, as well as Rule 502(b) of the Idaho Rules of Evidence; and those

documents should not be disclosed to Reed Taylor. *See* I.R.E. 502(b); *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 217 (Tenn. Ct. App. 2002) ("[T]he compelled disclosure of the existence of a joint defense agreement is an improper intrusion into the preparation of a litigant's case, . . . , and the joint defense agreements are themselves privileged.") (citing *Waller v. Financial Corp. of Am.*, 828 F.2d 579, 584 (9th Cir. 1987). "Thus, while the courts may review joint defense agreements in chambers, the agreements are not discoverable by other parties." *Id.*

Rule 1.6 of the Idaho Rules of Professional Conduct generally prohibits lawyers from disclosing information related to the representation of a client. IRPC 1.6(a). As noted in Comment 2:

> A fundamental principal in the client-lawyer relationship is that ... the lawyer must not reveal information relating to the representation. ... This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

Nevertheless, IRPC 1.6(b)(5) permits a lawyer "to reveal information relating to representation of a client to the extent the lawyer reasonably believes necessary ... to establish a defense to a ... civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of a client ...." *See also* IRPC 1.6 Comment 10 ("Where a legal claim ... alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believe necessary to establish a defense.") Reed's motion to disqualify Hawley Troxell is based on just such allegations that relate to the lawyers' representation of its clients, AIA Services, AIA Insurance and CropUSA.

However, Comment 14 of IRPC 1.6 admonishes that a disclosure of confidential information relating to the representation "should be no greater than the lawyer reasonably believes necessary to accomplish the purpose." More specifically:

> If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Accordingly, AIA Services, AIA Insurance and CropUSA should not be compelled to disclose privileged documents merely because Reed Taylor has filed a motion to disqualify. In keeping with the admonition in the Idaho Rules of Professional Conduct, these defendants request that, to protect the confidentiality of the Representation Agreements, they should be filed under seal and reviewed by the Court *in camera*, but not disclosed to Reed Taylor. *See* Idaho Court Administrative Rule 32(g) (explaining that "[d]ocuments filed or lodged with the court in camera" are "are exempt from disclosure."

The Representation Agreements that AIA Services, AIA Insurance and CropUSA intend to submit *in camera*, include:

(1) the engagement agreements between Hawley Troxell and its respective clients;

(2) conflict waivers by other defendants not represented by Hawley Troxell;

(3) the Joint Defense Agreement, as amended; and

(4) the Amended and Restated Standstill and Tolling Agreement (which was entered into in connection with the Joint Defense Agreement).

Upon receipt of the Court's order permitting the filing of these under seal, the above Representation Agreements will be submitted to the Court for *in camera* review.

The Court has the inherent authority to decide Plaintiff's Motion to Disqualify based upon documents filed under seal for *in camera* inspection. Presenting direct evidence of facts to support or oppose "a motion to disqualify counsel that is related to confidential information is constrained...by the need to avoid the disclosure of the former client's confidences and secrets." *See Faughn v. Perez*, 145 Cal.App.4th 592, 602, 51 Cal.Rptr.3d 692, 699 (Dist.Ct.App. 2006). "One method of presenting evidence and protecting its confidential nature is to file the documents with the court under seal for *in camera* review." *Id.*; *see also Morrison Knudsen Corp. v. Hancock, Rothert & Bunshoft*, 69 Cal.App.4th 223, 236, 81 Cal.Rptr.2d 425 (1999) (detailed reports about pending cases prepared by counsel submitted for *in camera* review); *Amparano v. ASARCO, Inc.*, 208 Ariz. 370, 93 P.3d 1086 (Ct.App. 2004) (parties permitted to submit evidence under seal for *in camera* inspection on motion to disqualify); *Hammond v. Goodyear Tire & Rubber Co.*, 933 F.Supp. 197 (N.D.N.Y. 1996) (motion to disqualify decided on *in camera* submissions filed under seal).

In *European Community v. RJR Nabisco, Inc.*, 134 F.Supp.2d 297 (E.D.N.Y. 2001), the defendant's motion to disqualify plaintiffs' counsel was denied based upon the court's *in camera* review of retention agreements which were filed under seal. In deciding the motion to disqualify, the court was asked to determine whether the retention agreements contained alleged ethical violations which necessitated the disqualification of plaintiffs' counsel under the disqualification standard espoused by the Second Circuit. Upon *in camera* inspection of the retention agreements, the court found no basis for disclosing the agreements to the defendant and found that the retention agreements provided no basis for disqualifying plaintiffs' counsel. Thus, defendant's motion to disqualify was denied.

Similarly, in *Barragree v. Tri-County Elec. Co-op., Inc.*, 263 Kan. 446, 950 P.2d 1351 (1997), the Kansas Supreme Court noted that the factual inquiry required for deciding a motion to disqualify may necessarily involve disclosure of alleged confidential information. In those instances, "[t]ools such as...an in camera inspection are available to the district court to prevent disclosure of the information to adverse parties and counsel." *Id.* at 462-463, 950 P.2d at 1361-1362.

In the present matter, one of the primary factual issues to be determined on Plaintiff's Motion to Disqualify is whether the Directors of AIA Services Corporation and AIA Insurance, Inc, gave their informed consent to their joint representation by Hawley Troxell, and to the Joint Defense Agreement entered into by all Defendants. This determination requires an inquiry into Representation Agreements, which are privileged. Based upon the foregoing authority, AIA Services and AIA Insurance request that they be permitted to submit said documents under seal for an *in camera* inspection to determine whether the requisite informed consent was given.

II. CONCLUSION

For the foregoing reason, AIA Services and AIA Insurance request that they be permitted to submit the Representation Agreements under seal for an *in camera* inspection, and that the Representation Agreements not be disclosed to Defendant Reed Taylor.

DATED THIS 7th day of October, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
D. John Ashby, ISB No. 7228
Attorneys for AIA Services Corporation,
AIA Insurance, Inc., and CropUSA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2008, I caused to be served a true copy of the foregoing MOTION TO SUBMIT DOCUMENTS IN CAMERA AND UNDER SEAL by the method indicated below, and addressed to each of the following:

Roderick C. Bond Ned A. Cannon Smith, Cannon & Bond PLLC 508 Eighth Street Lewiston, ID 83501 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
Michael S. Bissell Campbell, Bissell & Kirby, PLLC 416 Symons Building 7 South Howard Street Spokane, WA 99201 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail __✓__ Email
David A. Gittins Law Office of David A. Gittins P.O. Box 191 Clarkston, WA 99403 [Attorney for Defendants Duclos and Freeman]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
Michael E. McNichols Clements Brown & McNichols 321 13th Street Lewiston, ID 83501 [Attorneys for Defendant R. John Taylor]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
David R. Risley Randall, Black & Cox, PLLC P.O. Box 446 1106 Idaho Street Lewiston, ID 83501 [Attorneys for Defendants Connie Taylor, James Beck and Corrine Beck]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email

James J. Gatziolis
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_/_ Email

D. John Ashby

1 w/ CLK

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

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Attorneys for Defendant R. John Taylor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person;

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; and JOLEE DUCLOS, a single person;CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof;

Defendants.

Case No: CV 07-00208

MOTION TO SUBMIT DOCUMENTS *IN CAMERA* AND UNDER SEAL

Defendant John Taylor, by and through his attorney, Michael E. McNichols of Clements, Brown & McNichols, P.A., joins in AIA Services Corporation and AIA Insurance, Inc.'s Motion to Submit Documents *In Camera* and Under Seal for the reasons

3847

set forth, and based on the authority cited, in their Motion. In addition to the documents referenced by AIA Services Corporation and AIA Insurance, Inc., defendant John Taylor requests permission to submit under seal and *in camera* the April 20, 2007, written confirmation that Michael E. McNichols' representation of John Taylor is limited to the defense of him in this lawsuit.

DATED October 10, 2008.

CLEMENTS, BROWN & McNICHOLS, P.A.

By: _____
MICHAEL E. McNICHOLS

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Roderick C. Bond Ned A. Cannon Smith, Cannon & Bond, PLLC Attorneys at Law 508 Eighth Street Lewiston, ID 83501 Facsimile: 746-8421 rod@scblegal.com	[ ] [ ] [ ] [ ] [X]	U.S. Mail Hand Delivered Overnight Mail Facsimile E-Mail
Michael S. Bissell Campbell, Bissell & Kirby, PllC 7 South Howard Street, Ste. 416 Spokane, WA 99201 Facsimile: (509) 455-7111 mbissell@cbklawyers.com	[ ] [ ] [ ] [ ] [X]	U.S. Mail Hand Delivered Overnight Mail Facsimile E-Mail
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3848

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Michael E. McNichols

3849

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PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
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Attorneys for Defendant R. John Taylor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

* * * * *

REED J. TAYLOR, a single person; Plaintiff, vs. AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; and JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof; Defendants.	Case No. CV 07-00208 **EXPERT WITNESS AFFIDAVIT OF THOMAS D. MORGAN IN OPPOSITION TO PLAINTIFF'S MOTION TO DISQUALIFY THE ATTORNEYS AND LAW FIRM OF CLEMENTS, BROWN & McNICHOLS, P.A,**

* * * * *

3850

DISTRICT OF COLUMBIA)
)ss.
CITY OF WASHINGTON)

I, THOMAS D. MORGAN, being first duly sworn on oath, deposes and says:

1. I am over the age of eighteen years, competent to testify in court, and make this Affidavit based upon my personal knowledge, education and experience.

2. I am a graduate of the University of Chicago Law School and a member of the Bar of Illinois. From 1989 to 1998, and again since 2000, I have been the Oppenheim Professor of Antitrust and Trade Regulation Law at the George Washington University Law School. From 1998 to 2000, I served as the first Rex E. Lee Professor of Law at J. Reuben Clark Law School, Brigham Young University. From 1980 to 1985, I was Dean of the Emory University School of Law, and from 1985 to 1989, I was "Distinguished Professor of Law" at Emory. From 1966 to 1980, less time for military service, I was a professor at the University of Illinois College of Law.

a. In spite of the subject matter of my current academic chair, the subject of most of my teaching and scholarly research has been the professional obligations of lawyers. I have taught courses in that subject one or more times each year since 1974. I have authored or co-authored many publications in that area, including a widely-used law school casebook in the subject, *Professional Responsibility: Problems and Materials* (10th Edition 2008), published by the Foundation Press.

b. From 1986-2000, I served as an Associate Reporter for the American Law Institute's Restatement of the Law (Third): The Law Governing Lawyers (hereafter Restatement). In that role, I authored Chapter Eight on Conflicts of Interest and participated actively in preparation of the remaining chapters. From 1998-1999, I also served as an Associate Reporter for the American

Bar Association's Commission on Revision of the Model Rules of Professional Conduct (Ethics 2000), whose work led to revisions of the ABA Model Rules in 2002. My book, *Lawyer Law*, which compares the ABA Model Rules to the Restatement, was published by the American Bar Association in 2005.

c. I have been made an Honorary Fellow of the Illinois Bar Foundation, I received the Sanford D. Levy Professional Ethics Award from the New York State Bar Association, and I received the Keck Foundation Award from the American Bar foundation, all for my work in the field of professional responsibility.

d. I have rendered expert opinions on questions concerning lawyers' professional responsibilities, standards of care, and fiduciary obligations in affidavits, depositions and testimony in over seventy litigated cases, and my testimony as an expert in those fields has been admitted in both state and federal courts all over the country.

e. My current curriculum vitae, listing my publications and other professional activities, is attached to this Affidavit.

3. I have reviewed the following materials in preparation of this Affidavit:

a. First Amended Complaint in this matter, dated February 5, 2007.

b. Defendants' AIA Services Corporation (hereafter AIA Services) AIA Insurance, Inc. (hereafter AIA Insurance), and R. John Taylor (hereafter John Taylor) Motion for Enlargement of Time in which to file a responsive pleading, dated February 23, 2007.

c. Defendants' AIA Services, AIA Insurance, and John Taylor Motions for Temporary Restraining Order and a Preliminary Injunction, both dated February 26, 2007.

d. Affidavit of John Taylor, dated February 26, 2007, and exhibits thereto.

e. Transcript of Motion Hearing before Judge Brudie, dated February 26, 2007.

f. Temporary Restraining Order issued by Judge Brudie, dated February 26, 2007.

g. Plaintiff's Emergency Motion to Enforce Shareholder Vote and end Michael McNichols' representation of AIA Services and AIA Insurance, dated February 26, 2007.

h. Plaintiff's Memorandum of Law in Support of its Emergency Motion, dated February 28, 2007, and exhibits thereto.

i. Defendants' AIA Services, AIA Insurance, and John Taylor Motion to Strike Plaintiff's Emergency Motion, dated February 28, 2007.

j. Affidavits from John Taylor, dated February 28, 2007, and exhibits thereto.

k. Engagement letter from John Taylor to Michael E. McNichols (hereafter "McNichols"), dated March 1, 2007.

l. Court's opinion granting Defendant's Motion for Preliminary Injunction in Part, dated March 8, 2007.

m. Answer of AIA Services, AIA Insurance, and John Taylor in this matter, dated March 15, 2007.

n. McNichols' Motion to Withdraw as Counsel for AIA Services and AIA Insurance, dated March 28, 2007.

o. Plaintiff's response supporting McNichols' Motion to Withdraw, dated April 5, 2007.

p. Order granting McNichols' Motion to Withdraw, dated April 12, 2007.

q. Letter confirming John Taylor's individual retention of McNichols, dated April 20, 2007.

r. Standstill and Tolling Agreement among Defendants AIA Services, AIA Insurance, and John Taylor, effective May 2, 2007.

s. Notice of Entry of Appearance of Gary D. Babbit and D. John Ashby on behalf of AIA Services and AIA Insurance, filed May 7, 2007.

t. Joint Defense Agreement among defendants' counsel, effective May 17, 2007

u. Order denying Plaintiff's Motion for Reconsideration of the Preliminary Injunction, dated May 31, 2007.

v. Court's Opinion and Order on several pending motions, dated August 2, 2007.

w. Court's Opinion and Order on pending motions, dated November 29, 2007.

x. Fifth Amended Complaint in this matter, dated February 1, 2008.

y. Court's Opinion and Order Denying Plaintiff's Motion for Partial Summary Judgment, dated February 8, 2008.

z. Answer of John Taylor to the Fifth Amended Complaint and Counterclaim, dated February 25, 2008.

aa. Court's Opinion and Order Granting Defendants' AIA Services and AIA Insurance Certification for Interlocutory Appeal, dated May 8, 2008.

bb. Court's Opinion and Order Denying Plaintiff's Motion for Summary Judgment, dated May 8, 2008.

cc. Order of the Idaho Supreme Court Denying Defendants' AIA Services Corporation and AIA Insurance, Inc.'s Motion for Leave to Appeal, dated June 18, 2008.

dd. Plaintiff's Motion to Disqualify Defendants' Law Firms, dated September 4, 2008.

ee. Affidavit of Roderick C. Bond in support of the Motion to Disqualify, dated August 28, 2008, and exhibits thereto.

ff. Affidavit of Reed Taylor in Support of the Motion to Disqualify, dated September 3, 2008.

gg. Affidavit of Donna J. Taylor in Support of the Motion to Disqualify, dated September 3, 2008.

hh. Supplemental Affidavit of Roderick C. Bond in Support of the Motion to Disqualify and other Motions, dated September 3, 2008, and exhibits thereto.

ii. Undated Expert Witness Affidavit of Peter R. Jarvis in Support of the Motion to Disqualify.

jj. Expert Witness Affidavit of Steve P. Calandrillo in Support of the Motion to Disqualify, dated August 28, 2008.

kk. Expert Witness Affidavit of W.H. Knight, Jr., in Support of the Motion to Disqualify, dated September 3, 2008.

ll. Expert Witness Affidavit of Paul E. Pederson in Support of the Motion to Disqualify, dated September 8, 2998,.

4. Based on the above materials, I understand the essentially undisputed facts to be as follows:

a. On July 22, 1995, Plaintiff Reed Taylor sold his shares in AIA Services back to that company in exchange for monetary and other consideration, including a $6 million promissory note, a security agreement and stock pledge. Reed Taylor's younger brother, defendant John Taylor, became CEO of the company.

b. On January 29, 2007, Reed Taylor filed the present action against John Taylor , AIA Services and AIA Insurance. A week later, on February 5, 2007, Reed Taylor filed a First Amended Complaint adding additional parties and claims.

c. At no time between July 1995 and January 2007 had McNichols or his law firm Clements, Brown & McNichols represented John Taylor, AIA Services or AIA Insurance. McNichols was retained by John Taylor to represent all three parties for purposes connected with the claims being made by Reed Taylor. It is my understanding that the first legal work ever done by Mr. McNichols or his firm on behalf of either John Taylor, AIA Services, or AIA Insurance was on January 24, 2007. The first formal appearance made in the case by Mr. McNichols and/or his law firm was on Friday, February 23, 2007, when he requested an enlargement of time to file a responsive pleading.

d. The previous day, Thursday, February 22, 2007, without notice to John Taylor or the other officers of AIA Services or AIA Insurance, Reed Taylor had signed what purports to be a consent in lieu of a meeting of shareholders of AIA Insurance, in which document he purports to remove John Taylor and other directors of AIA Insurance and elect himself as sole director.

e. Furthermore, in the early morning hours of Sunday, February 25,2007, Reed Taylor entered the offices of AIA Insurance with a locksmith and others; Reed Taylor directed the locksmith to change the buildings locks so that John Taylor and the other employees of AIA Insurance would not have access to their offices. The entry activated the building security system and Reed Taylor and his associates left the premises after the Lewiston Police Department responded.

f. Monday, February 26, 2007, was a busy day for all parties. On behalf of John Taylor, AIA Services and AIA Insurance, McNichols sought a temporary restraining order and

preliminary injunction against Reed Taylor's efforts to assert control over AIA Insurance before the issue of who had legal authority to exercise control could be resolved. Reed Taylor filed competing motions to be declared the sole director of AIA Insurance and to terminate McNichols as its counsel.

g. After a hearing on the afternoon of February 26, 2007, this Court entered the temporary restraining order requested by John Taylor and followed it with a preliminary injunction entered on March 8, 2007. Thus, at that point, John Taylor was authorized to be managing both companies, and on March 15, 2007, McNichols filed an Answer in this matter on behalf of AIA Services, AIA Insurance, and John Taylor.

h. By Wednesday, March 28, 2007, McNichols recognized that while the interests of AIA Services, AIA Insurance, and John Taylor were aligned at that moment, their interests might differ depending on how the pending litigation developed. Thus, he filed a Motion to Withdraw as counsel for AIA Services and AIA Insurance. On April 5, 2007, Plaintiff Reed Taylor filed a pleading indicating no opposition to the withdrawal of McNichols as counsel for AIA Services and AIA Insurance, and also registering no formal objection to McNichols continuing to represent Mr. Taylor individually. As indicated above, the Court's Order approving McNichols withdrawal as counsel for the defendants AIA Services and AIA Insurance only was entered on April 12, 2007. Thereafter, attorneys Gary D. Babbit and D. John Ashby of Hawley Troxell, Ennis & Hawley, LLP, entered an appearance on behalf of the defendant companies, AIA Services and AIA Insurance.

i. In the over sixteen months between April 2007 and September 2008, McNichols has openly represented John Taylor in this matter. On August 18, 2008, Reed Taylor filed a separate action against McNichols asserting that his representation of Defendant John Taylor in this matter breached statutory and common law duties that McNichols allegedly owed to Plaintiff Reed Taylor

as a result of Plaintiff's claimed rights in AIA Services and AIA Insurance during the period of this litigation. Plaintiff's Motion to Disqualify McNichols was filed on September 4, 2008.

5. McNichols was counsel of record in this case for the defendants John Taylor, AIA Services and AIA Insurance for a period of approximately seven weeks, from his first formal appearance in this case February 23, 2007, to April 12, 2007, the date of the Court's order approving McNichols' withdrawal as counsel for the AIA corporate defendants. In my professional opinion, the suggestion by Plaintiff and his experts that McNichols acted improperly in that representation or in his current representation of John Taylor alone, is erroneous, irresponsible and frivolous.

a. McNichols played no role in any financial dealings between John Taylor, AIA Services and AIA Insurance. He became counsel for the three clients at the time the claims were being raised by Reed Taylor in late January of 2007. McNichols has acted as a trial lawyer in this litigation, pure and simple.

b. When Plaintiff's Complaint was filed, the job to be done was to get an Answer filed on behalf of the three defendants. McNichols responsibilities grew when Reed Taylor made his early morning visit to AIA Insurance's corporate offices. On any view of the interests of the companies, however, it was entirely proper for McNichols to help John Taylor and the AIA corporations for which Taylor was then responsible to get the status quo restored so that the merits of the corporate control issues could be resolved in this litigation.

c. Those tasks accomplished, McNichols acknowledged that, while John Taylor is in charge of the AIA companies today, the corporations are separate legal entities and should have separate representation going forward, due to the potential for future conflicts. Thus, he moved to withdraw as counsel for the corporate defendants. Plaintiff Reed Taylor did not object to this effort,

and filed a non-opposition to the McNichols motion to withdraw as counsel for the corporate defendants, and the Plaintiff did not object to McNichols continuing to represent the individual defendant John Taylor at that point. Thereafter, for over sixteen months, McNichols has openly represented John Taylor and not the corporations.

d. As I read the arguments of Plaintiff's counsel and his experts, there seem to be three legal claims of impropriety being asserted. First, Idaho Rules of Professional Conduct, Rule 1.9, prohibits representation of one client in a matter where the claims of that client are "materially adverse" to the former client. That is not the case here. One of the primary issues before the Court is who should be found to have legal control of AIA Services and AIA Insurance. At the moment, John Taylor is lawfully exercising that control. McNichols is not representing John Taylor in a manner "materially adverse" to his former clients, AIA Services and AIA Insurance. John Taylor's sole adversary is Reed Taylor whom McNichols has never represented.

e. Indeed, if a case were later to be filed in which AIA Services and AIA Insurance sued John Taylor, and if McNichols were to represent John Taylor in that case, the question would be whether the issues in that case were "substantially related" to the issues in this case. We cannot know what form any such case might take, but it is not at all apparent that the issues would necessarily meet the substantial relationship test. In any event, no such suit has been filed, and there is no basis to find a Rule 1.9 violation in McNichols' representation of John Taylor in this case.

f. Second, McNichols is accused of violating the "hot potato" doctrine. The hot potato doctrine deals with a situation when a lawyer represents Client A in Case 1 and Client B comes along wanting to file Case 2 against Client A in a matter unrelated to Case 1. Because Idaho Rule 1.7 would prohibit a lawyer from representing one client against another current client, even

if the matters are unrelated, the hot potato doctrine simply says that the lawyer may not withdraw from representing Client A in Case 1 so as to make Client A a former client, subject only to Rule 1.9 and thus allow the lawyer to represent Client B in unrelated Case 2. *See ALI Restatement of the Law Governing Lawyers § 132, Comment c, and its Reporters' Note.*

g. The facts of this case bear no resemblance to a hot potato situation. McNichols represented John Taylor in this litigation and the two AIA companies for which John Taylor had responsibility. McNichols then withdrew from the corporate representation, not so as to sue them, but to assure the companies had independent advice going forward. Plaintiff Reed Taylor filed a non-opposition to this, and in so doing, did not register any formal objection to Mr. McNichols continuing to represent John Taylor individually. In my professional opinion, McNichols' conduct was proper in every way; indeed, it was a textbook example of how a lawyer should act.

h. Third, Plaintiff Reed Taylor seems to assert he is entitled to disqualify McNichols from representing Defendant John Taylor simply by filing a separate action alleging that helping John Taylor defend himself renders McNichols a conspirator who is aiding and abetting damage to Plaintiff and the AIA companies. Simply to state the proposition is to demonstrate its frivolousness. There are few propositions more basic than that a party to litigation may retain counsel of his choice. Likewise, in almost any case, an opposing party could assert that its case would have gone better if counsel for the other side had not been as effective. Reed Taylor's dispute in this case is with John Taylor, not John Taylor's lawyer. Filing suit against McNichols gives Reed Taylor no right to disqualify McNichols from serving as John Taylor's counsel. If John Taylor were to believe McNichols was representing him less well because of Reed Taylor's suit against McNichols, John Taylor could fire McNichols at any time. What is clear, however, is that the Plaintiff has no right

to deny the Defendant the counsel of Defendant's choice in this litigation

6. Finally, there is not only no justification for disqualification of McNichols and his firm; there is nothing Plaintiff could gain by it other than the benefit of random harassment

a. The Court has ordered McNichols to retain his files and records from the period during which he represented the corporations; any information about that period can thus be reached by whomever is held later to have authority to see the privileged information.

b. There is an agreement in place tolling the statute of limitations as to any action against John Taylor by AIA Services and AIA Insurance. As a result, any claims the corporate entities may have against John Taylor, among others, are legally preserved for all purposes.

c. Any relevant information McNichols may have gained about the companies during the short time they were his clients would appear to be information that would be well known by John Taylor who at all times throughout this litigation was the acting CEO of such companies. Any such information would thus be available to whomever might succeed McNichols as John Taylor's counsel.

7 I reserve the right to offer further opinions in this matter as new information is developed or as new arguments are raised by the counsel or their expert witnesses.

DATED this 7th day of October, 2008.

I Norma S. Lamont, hereby certify that this is a true and correct copy of the original document.
Signatory
District of Columbia : SS
Subscribed and Sworn to before me this 7th day of October 2008
Notary Public, D.C.
My commission expires
Norma S. Lamont
Notary Public, District of Columbia
My Commission Expires 8/14/2013

THOMAS D MORGAN

3861

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Roderick C. Bond Ned A. Cannon Smith, Cannon & Bond, PLLC Attorneys at Law 508 Eighth Street Lewiston, ID 83501 Facsimile: 746-8421 rod@scblegal.com	[ ] [ ] [ ] [ ] [X]	U.S. Mail Hand Delivered Overnight Mail Facsimile E-Mail
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Michael E. McNichols

3863

Curriculum Vitae
THOMAS D. MORGAN

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Office: George Washington University Law School, 720 20th Street, N.W., Washington DC 20052 (202) 994-9020 e-mail: tmorgan@law.gwu.edu

Undergraduate Education:

Northwestern University, Evanston, Illinois, 1959-62
B.A. degree, highest distinction Member, Phi Beta Kappa

Legal Education:

University of Chicago Law School, Chicago, Illinois, 1962-65
J.D. degree with honors; Member, Order of the Coif
Comment Editor, Volume 32, University of Chicago Law Review

Professional Experience:

Oppenheim Professor of Antitrust and Trade Regulation Law, George Washington University, 1989-98; since 2000

Rex E. Lee Professor of Law, Brigham Young University, 1998-2000

Dean, Emory University School of Law, 1980-85
Distinguished Professor of Law 1985-89

Professor of Law, University of Illinois, 1974-80
Associate Professor, Illinois, 1970-74
Assistant Professor, Illinois, 1966-67

Visiting Professor, Brigham Young University, Fall 1994
Monash University (Australia), Spring 1988
Cornell University, Winter 1974

Special Assistant to Assistant Secretary of Defense, 1969-70
Attorney, Office of Air Force General Counsel, 1967-69

Bigelow Teaching Fellow, University of Chicago Law School, 1965-66

Publications:

A. In the Field of Professional Responsibility

PROFESSIONAL RESPONSIBILITY: PROBLEMS AND MATERIALS (Foundation Press 1976); 2nd Edition 1981; 3rd Edition 1984; 4th Edition 1987; 5th Edition 1991; 6th Edition 1995, 7th Edition 2000, 8th Edition 2003, 9th Edition 2006 (co-authored with R. Rotunda; with Teachers' Manuals)

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AMERICAN LAW INSTITUTE, RESTATEMENT OF THE LAW (THIRD): THE LAW GOVERNING LAWYERS (2000) (with C. Wolfram & J. Leubsdorf)

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"Federal Chartering of Corporations" and "Shareholder Remedies in Corporations" in M.B. Johnson, Ed., The Attack on Corporate America: The Corporate Issues Sourcebook (McGraw-Hill 1978)

Review of "Economic Analysis and Antitrust Law," 33 Vanderbilt L. Rev. 1523 (1980)

"The Deregulation Bandwagon: Too Far, Too Fast?," 2 J. Law & Commerce 1 (1982)

Review of "Antitrust Stories," the Antitrust source www.antitrustsource.com (Aug 2008)

C. In The Field of Legal Education

"Computer-Based Legal Education at the University of Illinois: A Report of Two Years' Experience," 27 J. Legal Education 138 (1975) (with P. Maggs)

"Teaching Students for the 21st Century," 36 J. Legal Education 285 (1986)

"Thinking About Bar Examining: The Challenge of Protecting the Public," 55 Bar Examiner 27 (Nov.1986)

"President's Address", 90-1 AALS Newsletter 1 (Feb. 1990)

"Should We Oppose Ranking of Law Schools?, 90-2 AALS Newsletter 1 (Apr. 1990)

"Legal Education Organizations in Business", 90-3 AALS Newsletter 1 (Aug. 1990)

"The Challenge to Maintain Diversity in Legal Education", 90-4 AALS Newsletter 1 (Nov. 1990)

"A Defense of Legal Education in the 1990s", 48 Wash. & Lee L. Rev. 1 (1991)

"Admission of George Mason to Membership in the Association of American Law Schools," 50 Case Western Reserve L. Rev. 445 (1999)

Participation in Public Programs:

A. Endowed Lectures Given

Mellon Lecture, University of Pittsburgh - 1981
Altheimer Lecture, University of Arkansas (Little Rock) - 1987
Dunwody Lecture, University of Florida - 1990
Lane Foundation Lecture, Creighton University - 1990
Tucker Lecture, Washington & Lee University - 1990
Pirsig Lecture, Wm. Mitchell Law School - 1996
Van Arsdell Lecture, University of Illinois - 1997
Keck Award Lecture, American Bar Foundation - 2000
Tabor Lecture, Valparaiso University - 2003
Sullivan Lecture, Capital University - 2004

B. Representative Programs on Which Served as Speaker or Panelist

Lets Make a Deal (the Ethics of Negotiation) - ABA Conference on Professional Responsibility (Palm Beach) - June 1992

Reporting a Client's Continuing Crime or Fraud - ABA Conference on Professional Responsibility (Chicago) - May 1993

Ethical Issues in Representing Older Clients - Fordham University School of Law (New York) - December 1993

Economic Reality Facing 21st Century Lawyers - University of Washington School of Law (Seattle) - April 1994

Problem of Representing a Regulated Client, Eleventh Circuit Judicial Conference (Orlando) - May 1994

Ethical Issues in Products Liability Cases - Products Liability Committee of the ABA Litigation Section (Tucson) - February 1995

Ethical Issues Arising in the O.J. Simpson Case - University of Washington School of Law (Seattle) - May 1995

Competition Policy for the New South Africa (Pretoria) - November 1995

Ethical Issues in Representing Children - Fordham University School of Law (New York) - December 1995

Are We a Cartel? The ABA/DOJ Consent Decree - AALS Annual Meeting (San Antonio) - January 1996

Assuring Effective Law Firm Risk Management - ALAS Annual Meeting (San Juan) - June 1996

Professional Responsibilities of the Law Teacher - AALS (Washington) - July 1996

Ethical Issues for Mediators and Advocates - ABA Annual Meeting (Orlando) - August 1996

Legal Issues in Cyberspace - ABA Annual Meeting (Orlando) - August 1996

Conflict of Interest Rules -- An Economic, Comparative & Political Assessment - Federalist Society Lawyers' Convention (Washington) - November 1996

Ethical Obligations of Insurance Defense Lawyers - AALS Annual Meeting (Washington) - January 1997

Teaching Legal Ethics by the Problem Method - College of William & Mary--Keck Foundation Conference (Williamsburg) - March 1997

Litigators Under Fire: Handling Professional Dilemmas In and Out of Litigation - televised ALI/ABA CLE program (Washington) - April 1997

Conflicts of Interest in the New Forms of Law Practice - South Texas Law School Symposium (Houston) - September 1997

The Place of Rules in the Judgment of Christian Lawyers - AALS Annual Meeting (San Francisco) - January 1998

Fiduciary Obligations in Dismissal of a Law Firm Partner - Washington & Lee Law School Symposium (Lexington, VA) - April 1998

Impact of Disciplinary Action on Lawyer's Status as Certified Specialist - ABA Committee on Specialization National Roundtable (Washington) - May 1998

Conflicts of Interest in the Restatement of the Law Governing Lawyers - National Organization of Bar Counsel (Toronto) - July 1998

The Ethics of Teaching Legal Ethics - Association of American Law Schools (Washington) - October 1998

The New Restatement of the Law Governing Lawyers: What Is It & How Does It Affect Your Practice? - Assn of Bar of City of New York (New York) - November 1998

Imputation, Screens & Personal Conflicts - ABA Conference on Professional Responsibility (La Jolla) - June 1999

The Future of Legal Education - Dedication of Sullivan Hall, the new Seattle University Law Building (Seattle) - October 1999

Legal Ethics in the New Millennium - J. Reuben Clark Soc. (Dallas) - November 1999

Unauthorized Practice of Law and Ethical Risks to Lawyers from Multistate Practice - ALAS Telephone Seminar (Chicago) - December 1999

Ethics 2000: Rewriting the Standards for Lawyer Conduct - American Intellectual Property Law Association (La Quinta, CA) - January 2000

Real World Pressures on Professionalism - University of Arkansas at Little Rock Law School (Little Rock, AR) - February 2000

Professional Responsibility Issues Arising Out of Electronic Commerce - ABA Section of Public Contract Law (Annapolis, MD) - March 2000

Multidisciplinary Practice: Curse, Cure or Tempest in a Teapot - American Intellectual Property Law Association (Pittsburgh, PA) - May 2000

Ethics 2000: Proposed Changes in the Law Governing Lawyers - Conference of Chief Justices (Rapid City, SD) - July 2000

Multidisciplinary Practice: Dead Letter Issue or Here to Stay? - George Washington University Alumni Association - September 2000

Attorney Standards in Federal Courts and Developments in the Multidisciplinary Practice Controversy - Conference of Chief Justices (Baltimore) - January 2001

Proposed Changes in Rules Governing Former Government Lawyers - AEI & Brookings Transition to Governing Project (Washington) - February 2001

Multijurisdictional Practice - Turner Seminar (Memphis) - February 2001

Ethical Issues in Large Firms - Ass'n of Legal Administrators (Baltimore) - May 2001

Law Firm Ancillary Services - ALAS Annual Meeting (Bermuda) - June 2001

Changes in Ethical Standards Created by the Ethics 2000 Project - Promotion Marketing Association (Washington) - December 2001

How Can We Teach Professionalism? - George Washington Law School Dean's Board of Advisers (Washington) - March 2002

New Rule 1.6 on Disclosure of Confidential Client Information - ABA Civil Justice Roundtable (Washington) - March 2002

Ethics for Corporate In-House Counsel - American College of Investment Counsel (Chicago) - April 2002

Ethical Issues in Tax Audits - Nat'l Ass'n of Bond Lawyers (Washington) - May 2002

Treading Water: A Young Lawyer's Guide to Ethics in Varying Practice Environments - ABA Tax Section Young Lawyers Committee (Washington) - May 2002

Shifting Ethical Sands: Ethics 2000 and Beyond - Federal Communications Bar Ass'n (Washington) - June 2002

Multijurisdictional Practice - ABA Forum on Franchising (Phoenix) - October 2002

The Sarbanes-Oxley Act of 2002 and the ABA Task Force on Corporate Responsibility Report (ALAS Telephone Seminar) - October 2002

Multijurisdictional Practice - Transportation Law Institute (Washington) - Nov. 2002

Asset Protection Planning - ALI-ABA Teleconference Program - Nov. 2002

At the Bar and in the Boardroom: The Ethics of Corporate Lawyering - Federalist Society (Washington) - Nov. 2002

Law Firm Risk Management: Post-Enron Challenges - Hildebrandt Conference (New York) - Nov. 2002

Future Regulation of Securities Lawyers - ABA Section of Business Law, Committee on Federal Securities Regulation (Washington) - Nov. 2002

What Lawyers Need to Know to Comply with the New SEC Professional Conduct Rules - ABA Section of Business Law Televised Forum (Washington) - Feb 2003

Ethics in Representing Organizational Clients After Sarbanes-Oxley - ABA Section of Business Law Spring Meeting (Los Angeles) - April 2003

Corruption in the Executive Suite: The Nation Responds - National Teleconference from ABA Public Utility Section Spring Meeting (Washington) - April 2003

Sarbanes-Oxley Revolution in Disclosure and Corporate Governance: Complying with the New Requirements - ABA National Institute (Washington) - May 2003

Client Confidentiality, Corporate Representation and Sarbanes-Oxley - ABA National Conference on Professional Responsibility (Chicago) - May 2003

Friend or Foe: The Restatement of Law Governing Lawyers - ABA National Legal Malpractice Conference (La Jolla) - September 2003

Where Were the Lawyers in Enron? - Cato Institute (Washington) - October 2003

Federalism & Regulation of Attorneys - Federalist Soc. (Washington) - November 2003

Testified before the House Subcommittee on Capital Markets' Hearing on the Role of Attorneys in Corporate Governance (Washington) - February 2004

The Lawyer-Lobbyist "on the Frontier": What Legal and Ethical Rules Apply? - ABA Mid-Year Meeting (San Antonio) - February 2004

The Client(s) of a Corporate Lawyer - Capital U. Law School (Columbus) - March 2004

Judicial Ethics: A Reprise of Recent Events - Federalist Soc. (Washington) - April 2004

Ethical Issues Facing Public Interest Law Firms - Heritage Foundation (Washington) - October 2004

Drafting an Ethical Code for a Diverse Legal Profession - Univ. of Memphis Law School (Memphis) - October 2004

Ethical Issues in International Trade Cases - International Trade Trial Lawyers Association (Washington) - November 2004

Professional Regulation of Business Lawyers Isn't Going to Get Any Easier - ABA Section of Business Law (Washington) - November 2004

Problems for Corporate Lawyers in Complying with the Sarbanes-Oxley Act - New Jersey Corporate Counsel Association (Livingston, NJ) - January 2005

Avoiding Conflicts in Business Law Practice: Seven Deadly Sins - ABA Section of Business Law (Nashville) - April 2005

Fireside Chat on Legal and Accounting Ethics - SEC Historical Society (Washington) - November 2005

When Good Clients Go Bad - ALAS Annual Meeting (Toronto) - June 2006

Lawyers Face the Future - St. Thomas Univ. Law School (Minneapolis) - August 2006

Regulating Corporate Morality - George Washington Corporate & Business Law Society (Washington) - September 2006

Comments on Noisy Withdrawal - Case Law School Leet Symposium (Cleveland) - October 2006

The ABA Role in Law School Accreditation - Federalist Society Lawyers' Convention (Washington) - November 2006

Investigative Techniques: Legal, Ethical and Other Limits - ABA Section of Antitrust Law (National) - December 2006

Ethics Issues in Corporate Internal Investigations - Georgia Bar (Atlanta) - March 2007

Are Regulatory Lawyers' Ethical Obligations Changing? - ABA Section of Public Utility Law (Washington) - April 2007

Antitrust Litigation Ethics From Soup to Nuts - ABA Section of Antitrust Law (Washington) - April 2007

How to Survive in Today's Competitive Environment and Comply With the Rules of Professional Conduct - Wisconsin State Bar (Milwaukee) - May 2007

Audit Response Letters: Will There Be Peace Under the Treaty? - ABA National Conference on Professional Responsibility (Chicago) – May 2007

The Buried Bodies Case: Alive and Well After Thirty Years - ABA National Conference on Professional Responsibility (Chicago) – May 2007

Organization and Discipline for an Independent Legal Profession - Visit of Leaders of the Iraqi and Kurdistan Bar Associations (Washington) – November 2007

Feeling Conflicted? The Experts Opine and Prescribe - Tennessee Bar Foundation (Nashville) – January 2008

Ethics Issues in Qui Tam Litigation - ABA National Institute on Civil False Claims (Washington) – June 2008.

Major Civic and Professional Activities:

A. In the Field of Professional Responsibility

Associate Reporter, American Law Institute Restatement of the Law, The Law Governing Lawyers, 1986-2000

Associate Reporter, American Bar Association Ethics 2000 Commission, 1998-99

Member, Advisory Board, ABA/BNA Lawyers' Manual on Professional Conduct, since 1984; chair 1986-87 & 1992-93

Reporter, American Bar Association Commission on Professionalism, 1985-86

Chair, Federalist Society Practice Group on Professional Responsibility and Legal Education 2005-2007

Member, Drafting Committee, Multistate Professional Responsibility Examination, National Conference of Bar Examiners, 1986-89

Member, Committee on Professional Ethics, Illinois State Bar Association, 1974-1980; Vice Chair 1979-80

Chair, Association of American Law Schools Professional Development Workshop on Professional Responsibility - Washington, October 1993.

B. In the Fields of Economic Regulation and Administrative Law

Vice Chair, ABA Section of Administrative Law & Regulatory Practice, 2001-2002

Consultant, Administrative Conference of the U.S., 1975-1979 & 1985-1989

Participated in consultations with governments of Malaysia, Slovenia and South Africa on proposed national competition policies

Council Member, ABA Section of Administrative Law, 1983-1986

C. In the Field of Legal Education

President, Association of American Law Schools, 1990

Member, AALS Executive Committee, 1986-1991

Chair, AALS Long Range Planning Committee, 1988-1989

Member, AALS Special Committee on Faculty Recruitment Practices, 2005-2007

Member, AALS Committee on the Ethical and Professional Responsibilities of Law Professors, 1988-1989

Special Honors Received:

Illinois State Bar Foundation, Honorary Fellow (1988) (for contributions to lawyer professionalism)

American Bar Foundation, Keck Foundation Award (2000) (for distinguished scholarship in legal ethics and professional responsibility)

New York State Bar Association, Sanford D. Levy Professional Ethics Award (2008) (for lifetime contributions to legal ethics scholarship)

Legal Consulting:

Testified in twenty-one contested trials or hearings involving issues of lawyer discipline, disqualification, right to fees and malpractice.

Gave depositions in twenty-six cases resolved prior to trial.

Submitted declarations or affidavits in twenty-seven other cases, typically in connection with motions for summary judgment or to disqualify.

Organization Memberships:

American Bar Association
American Law Institute (Life Member)
American Bar Foundation (Fellow)
Illinois State Bar Association
Association of Professional Responsibility Lawyers
American Judicature Society
American Law & Economics Association

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person; Plaintiff, vs. AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; and JOLEE DUCLOS, a single person;CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof; Defendants.	Case No: CV 07-00208 MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO DISQUALIFY McNICHOLS AS ATTORNEY FOR JOHN TAYLOR

I.

INTRODUCTION

In late January of 2007, Michael E. McNichols was retained to represent John Taylor, AIA Services Corp, and AIA Insurance, Inc. regarding this lawsuit. Approximately two months later, he moved to withdraw as attorney for the corporations. Plaintiff did not oppose the Motion or McNichols' continued representation of John Taylor, and the Motion was granted. From that point forward, McNichols' has not represented the corporations and his sole client in this case has been John Taylor.

Now -- more than sixteen months and tens of thousands of dollars in legal expense later -- plaintiff has moved to disqualify McNichols and his firm from representing John Taylor. As discussed below, the Motion should be denied.

II.

PERTINENT FACTS

In 1995, Reed Taylor sold his shares in AIA Services back to the corporation in exchange for monetary and other consideration, including a promissory note, security agreement and stock pledge. His brother, John Taylor, then became the majority shareholder of AIA Services and CEO of both AIA Services and its wholly owned subsidiary, AIA Insurance.

On January 29, 2007, Reed Taylor sued John Taylor, AIA Services and AIA Insurance. He alleged, in essence, that he has not been paid, that he has the right to take control of the corporations, and that corporate assets have been inappropriately diverted by John Taylor.

Michael E. McNichols was retained to defend John Taylor, AIA Services and AIA Insurance in the lawsuit. Neither McNichols nor his law firm had ever before represented or provided legal services to John Taylor, Reed Taylor, AIA Services or AIA Insurance, and more specifically, McNichols and his firm had never played (and still have not played) any role in the financial dealings between John Taylor, Reed Taylor, AIA Services or AIA Insurance. (McNichols Affidavit, ¶ 4).

McNichols first formally appeared in the case on Friday, February 23, 2007. Unbeknownst to McNichols or the defendants, the previous day Reed Taylor had signed what purported to be a consent in lieu of a meeting of shareholders of AIA Insurance, in which he purported to remove John Taylor and the other directors of AIA Insurance and elect himself as the sole director.

In the early morning hours of Sunday, February 25, 2007, Reed Taylor entered the offices of AIA Insurance with a locksmith and others and directed the locksmith to change the building's locks so that John Taylor and the other employees of AIA Insurance would not have access to their offices. The

entry activated the building's security system, and Reed Taylor and his associates left the building after the police arrived.

On Monday, February 26, 2007, McNichols sought a temporary restraining order and a preliminary injunction against Reed Taylor's efforts to assert control over AIA Insurance before the issue of who had legal authority to exercise control could be resolved. In response, Reed Taylor filed a motion to be declared the sole director of AIA Insurance and to disqualify McNichols as counsel for AIA Services and AIA Insurance.

After a hearing that afternoon, the Court denied the Motion to Disqualify. The Court also granted the temporary restraining order and, shortly thereafter entered the requested preliminary injunction – which remains in effect. By virtue of the restraining order and preliminary injunction, John Taylor and the existing directors were authorized to continue managing both corporations.

On March 28, 2007 – approximately two months after he was first retained and thirty-three days after he first appeared in the case – McNichols moved to withdraw as attorney for the corporations due to potential future conflicts of interest. Reed Taylor did not oppose the Motion and did not file an objection to McNichols continued representation of John Taylor.

On April 12, 2007, the Court granted McNichols' Motion to Withdraw. Since that time, McNichols' has not represented the corporations and his sole client in this matter has been John Taylor. (McNichols Affidavit, ¶ 8). In

fact, on April 20, 2007, McNichols received written confirmation that the scope of his representation was limited to the defense of John Taylor in this lawsuit. (Id., ¶ 9).

After McNichols withdrew, Gary Babbitt and D. John Ashby of Hawley Troxell Ennis & Hawley, LLP assumed the defense of AIA Services and AIA Insurance.

On May 2, 2007, the defendants entered into a Standstill and Tolling Agreement which tolled the statute of limitations as to any action against John Taylor by AIA Services and AIA Insurance. The Standstill and Tolling Agreement were approved by the Directors of AIA Services and AIA Insurance.

On May 17, 2007, the defendants entered into a Joint Defense Agreement which recognized McNichols' continued representation of John Taylor and which was approved by the Directors of AIA Services and AIA Insurance.

On August 18, 2008, Reed Taylor sued McNichols and his firm arising out of his representation of John Taylor, AIA Services and AIA Insurance in this matter.

On September 4, 2008 – more than sixteen months after McNichols' representation of the corporations ended – Reed Taylor moved to disqualify McNichols as attorney for John Taylor.

III.

ARGUMENT

A. Idaho's Legal Standards Applicable To Disqualification Motions.

In Foster v. Traul, 145 Idaho 24, 175 P.3d 186 (2007), the Idaho Supreme Court held:

> The Preamble to the Idaho Rules of Professional Conduct provides that "the Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies." Idaho R. Prof. Conduct Preamble. The Preamble cautions that "the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons." *Id.* In *Weaver,* the Court of Appeals began with similar principles:
>
> > The moving party has the burden of establishing grounds for disqualification. The goal of the court should be to shape a remedy which will assure fairness to the parties and the integrity of the judicial process. Whenever possible, courts should endeavor to reach a solution that is least burdensome to the client.
>
> *Weaver*, 120 Idaho at 697, 819 P.2d at 115 (internal citations omitted). When the motion to disqualify comes from an opposing party, the motion should be viewed with caution. *Id.* The Court of Appeals applied a four-part test to determine whether an appearance of impropriety alone will give a party standing to interfere with an adverse party's choice of counsel:
>
> > (1) Whether the motion is being made for the purposes of harassing the defendant,
> >
> > (2) Whether the party bringing the motion will be damaged in some way if the motion is not granted,
> >
> > (3) Whether there are any alternative solutions, or is the proposed solution the least damaging possible under the circumstances, and

> (4) Whether the possibility of public suspicion will outweigh any benefits that might accrue to continued representation.
>
> *Weaver,* 120 Idaho at 698, 819 P.2d at 116.

175 P.3d at 194-195. (Emphasis added).

The Idaho Supreme Court has also held that:

> The court must also consider that a motion to disqualify opposing counsel should be filed at the onset of the litigation, or "with promptness and reasonable diligence" once the facts upon which the motion is based have become known. *Id.* at 698, 819 P.2d at 116. A failure to act promptly may warrant denial of the motion. *Id.*

Crown v. Hawkins Co., 128 Idaho 114, 123, 910 P.2d 786, 795 (1996).

The decision to grant or deny a motion to disqualify counsel is within the discretion of the trial court. *Id.*

B. The Motion To Disqualify Should Be Denied Because It Is Untimely.

Reed Taylor's objections to McNichols continued representation of John Taylor existed, and could and should have been raised, when McNichols gave notice that he intended to withdraw as attorney for AIA Services and AIA Insurance and continue as attorney for John Taylor. [1]

[1] Reed Taylor's claim that he delayed bringing the Motion to Disqualify McNichols as attorney for John Taylor because the Court indicated in response to his first Motion to Disqualify that it did not have the authority to disqualify is disingenuous. Reed Taylor cited the Idaho cases supporting a court's inherent authority to disqualify in his brief. (Memorandum of Reed Taylor in Support of His Motions and in Opposition to the Defendants' Motion, p. 28). Surely, his attorneys had read the cases they cited and so were well aware more than sixteen months ago of the Court's inherent authority to disqualify.

Reed Taylor filed no such objections. Instead, he filed a non-opposition to McNichols' Motion to Withdraw which included no objection to McNichols' continued representation of John Taylor.[2]

Reed Taylor waited more than sixteen months to move to disqualify McNichols as attorney for John Taylor. In that period of time, tens of thousands of dollars have been spent in the defense of John Taylor – money which will be largely wasted if John Taylor is required to obtain new counsel. Furthermore, given the sheer volume of materials and the complexity of the case, thousands of dollars more in legal fees would be incurred just for substitute counsel to become reasonably familiar with the case.

In short, Reed Taylor did not act or "with promptness and reasonable diligence," and John Taylor would be severely and unfairly prejudiced by disqualification of McNichols at this late stage of the case. Accordingly, Reed Taylor's Motion to Disqualify McNichols should be denied. *See*, Weaver v. Millard, 120 Idaho 692, 819 P.2d 110 (Ct. App. 1991)(thirteen month delay in bringing motion to disqualify supported trial court's denial of the motion).

[2] This is likely because Reed Taylor knew, based on the cases cited in his Memorandum, that it was appropriate for McNichols to continue representing John Taylor, a director of the corporations, even if he was disqualified from representing the corporations. Forrest v. Baeza, 58 Cal.App. 4th 65, 67 Cal.Rptr. 2d 857 (1997); and Musheno v. Gensemer, 897 F.Supp. 833 (M.D. Pa. 1995)(cited at page 28 of Memorandum of Reed Taylor in Support of His Motions and in Opposition to the Defendants' Motion.

C. There Is No Basis For Disqualifying McNichols.

Reed Taylor's motion enumerates numerous purported ethical violations which allegedly require the disqualification of McNichols and the attorneys and firms representing AIA Services, AIA Insurance, and Crop USA. Many of those purported violations apply to all of the attorneys and firms, and they have been ably responded to by Hawley Troxell. Accordingly, McNichols will not repeat Hawley Troxell's arguments and instead hereby incorporates them by reference.

McNichols will instead focus on the few alleged violations directed specifically toward him and his firm.

1. McNichols representation of John Taylor does not violate I.R.P.C 1.9.

AIA Services and AIA Insurance were clients of McNichols from late January of 2007 through April 12, 2007 when the Court granted McNichols' Motion to Withdraw. Since that time, they have been former clients.

I.R.P.C. governs a lawyer's duties to former clients. The Rule provides:

> **RULE 1.9: DUTIES TO FORMER CLIENTS**
>
> (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Thus, a lawyer who has formerly represented a client may not represent another person in the same matter if that person's interests are materially adverse to the former client, unless the former client consents. Additionally, a lawyer may not use information relating to the representation of a former client to the disadvantage of the former client.

Here, although AIA Services and AIA Insurance are in fact former clients of McNichols, their interests in this matter are not materially adverse to his

current client, John Taylor. As Professor Thomas Morgan of George Mason University explained in his Affidavit:

> This is not the case here. One of the primary issues before the Court is who should be found to have legal control of AIA Services and AIA Insurance. At the moment, John Taylor is lawfully exercising that control. McNichols is not representing John Taylor in a manner "materially adverse" to his former clients, AIA Services and AIA Insurance. John Taylor's sole adversary is Reed Taylor whom McNichols has never represented.

(Morgan Affidavit, ¶ 5(d)). Put simply, John Taylor, AIA Services and AIA Insurance are not adversaries in this litigation. Each of them has been sued by Reed Taylor, each of them believes Reed Taylor's claims are non-meritorious, and each of them therefore shares a common interest in defeating those claims.

Reed Taylor's claim that the corporations should be suing John Taylor does not change the fact that they have not done so – and hence there are no materially adverse interests in this litigation. Furthermore, via the Standstill and Tolling Agreement, the corporations' right to sue John Taylor, should they someday decide to do so, has been preserved.

Additionally, even if one made the unwarranted assumption that John Taylor's interests were somehow materially adverse in this matter to the interests of AIA Services and AIA Insurance, there is no I.R.P.C. 1.9 violation. The Directors of AIA Services and AIA Insurance – acting on independent legal advice – have consented to McNichols' continued representation of John Taylor

via the approved Joint Defense Agreement. This is expressly permitted under I.R.P.C. 1.9(a).

Reed Taylor claims that AIA Services and AIA Insurance could not give consent because he is the only person capable of giving consent. However, although Reed Taylor believes that he should be in control of the corporations, the simple fact is that he is not. Pursuant to the Court's temporary restraining order and preliminary injunction, John Taylor and the existing directors of the corporations are in control of the corporations and had and still have the power to consent to McNichols' representation of John Taylor.

Reed Taylor also claims that the corporations' directors could not give consent because they are being sued by him and are therefore interested parties. However, I.R.P.C. 1.9 does not require that consent be obtained from a "disinterested" former client – and, of course, it would be impossible to appoint "disinterested" directors here because whomever was appointed would be promptly sued by Reed Taylor and therefore become "interested."

Finally, there is absolutely no evidence that McNichols is using any information obtained during his representation of AIA Services or AIA Insurance to their disadvantage in this litigation. As mentioned, in this litigation the interests of John Taylor, AIA Services and AIA Insurance are aligned. More fundamentally, however, because John Taylor is the majority shareholder and CEO of AIA Services, and is also the CEO of AIA Insurance, which is a wholly

owned subsidiary of AIA Insurance, all information possessed by the corporations is possessed by John Taylor. It is therefore impossible for McNichols to pass information about the corporations to John Taylor which John Taylor does not already possess. Stated another way, even if John Taylor were to obtain a new lawyer who had never represented AIA Services or AIA Insurance, that lawyer would know, by virtue of knowledge John Taylor rightfully possesses, everything there is to know about the corporations. (Morgan Affidavit ¶ 6(c)). *See also*, Forrest v. Baeza, 58 Cal.App. 4th 65, 82, 67 Cal.Rptr. 2d 857, 868 (1997)(recognizing that in closely held corporations, director/shareholders posses the same information as the "corporation").

2. McNichols has not violated the "hot potato" doctrine.

Reed Taylor's assertion that McNichols has somehow violated the "hot potato" doctrine by "dropping" the corporations in favor of John Taylor is wrong. As Professor Morgan explained, the "hot potato" doctrine has no application in this case:

> The "hot potato" doctrine deals with a situation when a lawyer represents Client A in Case 1 and then Client B comes along wanting to file Case 2 against Client A in a matter unrelated to Case 1. Because Idaho Rule 1.7 would prohibit a lawyer from representing on client against another current client, even if the matters are unrelated, the hot potato doctrine simply says that the lawyer may not withdraw from representing Client A in Case 1 so as to make Client A a former client, subject only to Rule 1.9 and thus allow the lawyer to represent Client B in unrelated Case 2. *See ALI Restatement of the Law Governing Lawyers §132. Comment c, and its Reporter's Note.*

(Morgan Affidavit, ¶ 5(f)). McNichols did not withdraw from representing AIA Services and AIA Insurance so that he could sue them on John Taylor's behalf -- and, of course, John Taylor has not sued the corporations. Accordingly, the "hot potato" doctrine is simply inapplicable.

3. **McNichols is not disqualified because Reed Taylor has sued him.**

Reed Taylor contends that because he has sued McNichols arising out of his representation of John Taylor in this lawsuit, McNichols is disqualified because McNichols will now "skew" the defense of Taylor in his own favor. Obviously, neither Reed Taylor nor his lawyers know McNichols.

Reed Taylor's alleged concern over the adequacy of his brother's defense obviously is not genuine. In any event, it certainly is not a basis for disqualification. As explained by Professor Morgan:

> Third, Plaintiff Reed Taylor seems to assert he is entitled to disqualify McNichols from representing Defendant John Taylor simply by filing a separate action alleging that helping John Taylor defend himself renders McNichols a conspirator who is aiding and abetting damage to Plaintiff and the AIA companies. Simply to state the proposition is to demonstrate its frivolousness. There are few propositions more basic than that a party to litigation may retain counsel of his choice. Likewise, in almost any case, an opposing party could assert that its case would have gone better if counsel for the other side had not been as effective. Reed Taylor's dispute in this case is with John Taylor, not John Taylor's lawyer. Filing suit against McNichols gives Reed Taylor no right to disqualify McNichols from serving as John Taylor's counsel. If John Taylor were to believe McNichols was representing him less well because of Reed Taylor's suit against McNichols, John Taylor could fire McNichols at any time. What is clear, however, is that the Plaintiff has no right to deny the Defendant the Counsel of Defendant's choosing.

Put simply, the alleged impact of Reed's suit against McNichols on the relationship between McNichols and John Taylor is not Reed Taylor's concern. To the extent it is an issue, it is an issue solely between John Taylor and McNichols.

4. **McNichols continued representation of John Taylor does not create the appearance of impropriety.**

Other than Reed Taylor's baseless and self-interest driven allegations, there is nothing about McNichols' continued representation of Taylor which creates the appearance of impropriety.

As a consequence of Reed Taylor's midnight raid, it was in the interests of the corporations to act immediately to preserve the status quo. He did so by promptly moving for and obtaining a temporary restraining order and preliminary injunction. As stated by Professor Morgan: "On any view of the interests of the companies, however, it was entirely proper for McNichols to help John Taylor and the AIA corporations for which Taylor was then responsible to get the status quo restored so that the merits of the corporate control issues could be resolved in this litigation." (Morgan Affidavit, ¶ 5(b)).

Within thirty-three days after he first formally appeared in the case, McNichols moved to withdraw as attorney for the corporations because he recognized that although the interests of John Taylor and the corporations were currently aligned, there was a potential for future conflicts of interest. He then

moved to withdraw as attorney for the corporations, and expressly limited his representation of John Taylor to the defense of this lawsuit, and the corporations – acting on independent legal advice – consented to his continued representation of John Taylor via the approved Joint Defense Agreement. As stated by Professor Morgan:

> In my professional opinion, the suggestion by Plaintiff and his experts that McNichols acted improperly in that representation [the joint representation] or in his current representation of John Taylor alone, is erroneous, irresponsible and frivolous . . . . In my professional opinion, McNichols' conduct was proper in every way; indeed, it was a textbook example of how a lawyer should act.

(Morgan Affidavit, ¶'s 5 and 5(g)). Professor Morgan knows "textbook": he is the co-author the widely used law school textbook on professional responsibility *Professional Responsibility Problems and Materials.* (Morgan Affidavit, ¶ 2(a)).

In short, the appearance here is of propriety, not impropriety.

However, even if McNichols continued representation of John Taylor could arguably create an appearance of impropriety (and it cannot), disqualification would not be warranted. As mentioned, four factors are to be considered when disqualification is based on an alleged appearance of impropriety:

> (1) Whether the motion is being made for the purposes of harassing the defendant,
>
> (2) Whether the party bringing the motion will be damaged in some way if the motion is not granted,

> (3) Whether there are any alternative solutions, or is the proposed solution the least damaging possible under the circumstances, and
>
> (4) Whether the possibility of public suspicion will outweigh any benefits that might accrue to continued representation.

Foster, 175 P.3d at 194-195. Here, as evidenced by the more than sixteen month delay in bringing the motion, the companion lawsuit by Reed Taylor against McNichols, and the fact that Reed Taylor has absolutely nothing to gain other than a tactical advantage by disqualifying McNichols, the disqualification motion clearly is being made for the purposes of harassment.

Further, there is absolutely no evidence that Reed Taylor will be damaged in some way if his disqualification motion is not granted. McNichols has never represented Reed Taylor and so there is no possibility for misuse of information from him. Additionally, all knowledge McNichols acquired regarding the corporations is possessed by John Taylor, and so any subsequent attorney retained by John Taylor will, eventually, possess all the information about the corporations that McNichols now has.

And finally, there is no possibility of public suspicion arising from McNichols' continued representation of Taylor. If the public ever took an interest in this case, McNichols' representation of Taylor would not cause even the slightest hint of suspicion.

IV.

CONCLUSION

It was Reed Taylor's burden to establish the grounds for disqualification, and his effort to disqualify should be "viewed with caution." Weaver, Idaho at 697, 819 P.2d at 115. As established above, he has not satisfied his burden, and caution - - indeed, suspicion -- is clearly warranted. Accordingly, John Taylor's right to counsel of his choosing should be protected, tens of thousands of dollars in legal expense should not be wasted, and Reed Taylor's Motion to Disqualify McNichols and his firm should be denied.

DATED this 10th day of October, 2008.

CLEMENTS, BROWN & McNICHOLS, P.A.

By: _____
Michael E. McNichols

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Ned A. Cannon	[ ]	Hand Delivered
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Michael S. Bissell Campbell, Bissell & Kirby, PllC 7 South Howard Street, Ste. 416 Spokane, WA 99201 Facsimile: (509) 455-7111 mbissell@cbklawyers.com	[ ] [ ] [ ] [ ] [X]	U.S. Mail Hand Delivered Overnight Mail Facsimile E-Mail
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CLERK OF THE DIST. COURT

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Attorneys for Defendant R. John Taylor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person;

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; and JOLEE DUCLOS, a single person;CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof;

Defendants.

Case No: CV 07-00208

AFFIDAVIT OF MICHAEL E. McNICHOLS IN OPPOSITION TO PLAINTIFF'S MOTION TO DISQUALIFY

STATE OF IDAHO)
) ss.
County of Nez Perce)

MICHAEL E. McNICHOLS, being duly sworn on oath, states:

1. I am an adult citizen of the United States of America, competent to testify as a witness, and make this Affidavit on personal knowledge.

2. I am the attorney for defendant R. John Taylor in this matter.

3. I was first retained to represent R. John Taylor, AIA Services Corporation and AIA Insurance, Inc., on January 27, 2007, in anticipation of plaintiff Reed Taylor's lawsuit against them.

4. Neither I nor my law firm, Clements, Brown & McNichols, P.A., had ever before represented or provided legal services to R. John Taylor, Reed Taylor, AIA Services Corporation or AIA Insurance, Inc., and neither I nor my law firm had ever played - and still have not played - any role in the financial dealings between John Taylor, Reed Taylor, AIA Services Corporation or AIA Insurance, Inc.

5. I first formally appeared in this case on Friday, February 23, 2007.

6. On Monday, February 26, 2007, I sought a temporary restraining order and a preliminary injunction against Reed Taylor's efforts to assert control over AIA Insurance, Inc., before the issue of who had legal authority to exercise control could be resolved.

7. On March 28, 2007 - approximately two months after I was first retained and 33 days after I first appeared in the case, I moved to withdraw as attorney for the corporations due to potential future conflicts of interest.

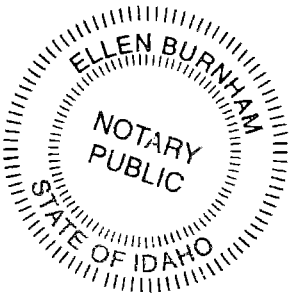
8. The Court granted my motion to withdraw on April 12, 2007. Since that time, I have not represented the corporations and my sole client in this matter has been John Taylor.

9. On April 20, 2007, I received written confirmation that the scope of my representation was limited to the defense of John Taylor in this lawsuit.

DATED this 10th day of October, 2008.

Michael E. McNichols

SUBSCRIBED AND SWORN to before me this 10th day of October, 2008.



Notary Public in and for the State of Idaho,
Residing at Lewiston, therein.
My Commission Expires: 10/19/11

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Attorneys for Defendant CropUSA Insurance Agency, Inc.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED. J. TAYLOR, a single person; Plaintiff, vs. AIA SERVICES CORPORATION, an Idaho Corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the Community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof, Defendants.	Case No. CV 07-00208 CROPUSA INSURANCE AGENCY, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO DISQUALIFY ATTORNEYS

AIA SERVICES CORPORATION, an Idaho corporation; and AIA INSURANCE, INC., an Idaho corporation,

Counterclaimants,

vs.

REED J. TAYLOR, a single person,

Counter-defendant.

Defendant CropUSA Insurance Agency, Inc., by and through its counsel of record, Quarles & Brady LLP and Hawley Troxell Ennis & Hawley LLP, submit this response in opposition to Plaintiff Reed Taylor's Amended Motion to Disqualify the Attorneys and Law Firms of Hawley Troxell Ennis & Hawley LLP; Clements, Brown & McNichols, P.A.; and Quarles & Brady LLP (the "Motion to Disqualify"). This Response is supported by the Affidavit of James J. Gatziolis.

I. INTRODUCTION

After amending his complaint four times over a period of a year and a half to sue CropUSA and every director of AIA Insurance, Inc. ("AIA Insurance") and AIA Services Corporation ("AIA Services"), Plaintiff now seeks to disqualify all counsel for the corporate defendants and John Taylor. Although Plaintiff has embroidered his claims into 27 allegedly separate grounds for disqualification, with respect to Quarles & Brady's representation of CropUSA, the claims boil down to three incorrect arguments:

(1) By zealously representing their clients and opposing the relief requested by plaintiff in his complaint, each defense counsel has "aided and abetted" defendants' alleged wrongdoing;

(2) The joint defense agreement has the effect of creating a direct attorney-client relationship between each defense counsel and every defendant; and

(3) Quarles & Brady is in possession of confidential information of AIA Insurance or AIA Services that is not already in CropUSA's possession.

Plaintiff's first argument is both wrong on the facts and wrong on the law. It is wrong on the facts with respect to Quarles & Brady, because Quarles & Brady was not involved in any of the alleged "related party transactions," almost all of which were undertaken before Quarles & Brady ever represented CropUSA. It is wrong on the law because it is flatly contrary to counsel's duty under the Idaho Rules of Professional Conduct ("IRPC") to zealously represent its client's legitimate interests within the bounds of the law and any reasonable extensions thereof.

Plaintiff's second argument evidences a gross misunderstanding of the scope, purpose and effect of joint defense agreements. Joint defense agreements involve only the common law joint defense privilege that protects from disclosure information shared among aligned parties relating to those parties' common interests. They do not create duties of loyalty or attorney-client relationships where none otherwise exist.

Plaintiff's third argument is also incorrect. Disqualification under a former-client conflicts analysis centers on the attorney's potential to share the confidential information of its former client that would not otherwise have been available to its current client. Even if this Court were to conclude that (a) Quarles & Brady represented AIA Insurance or AIA Services, and (b) those parties are materially adverse to CropUSA, there would be no danger of Quarles & Brady communicating its purported former client's confidential information to CropUSA, because CropUSA necessarily has that information. Two of CropUSA's directors are either current or former directors of AIA Insurance and AIA Services. Accordingly, there is no confidential information that Quarles & Brady might communicate to CropUSA that CropUSA does not already possess.

In addition, Plaintiff's motion should be denied because he is late in bringing it. In contrast to the undeniable harm that CropUSA would suffer if required to change counsel now, Plaintiff has not even alleged any legitimate harm that he would suffer in the event that Quarles & Brady continues to represent CropUSA. The only "harm" that he *has* alleged -- that he is being forced to prosecute his legal claims against the spirited opposition of CropUSA and its present counsel -- is not legally recognized harm. Rather, it is the fundamental characteristic of our adversary system of justice. For all of these reasons, Plaintiff's motion should be denied. Moreover, because Plaintiff's motion was brought in bad faith as a litigation tactic, CropUSA should also be awarded its costs for being forced to defend against it.

II. FACTUAL BACKGROUND

In June 2006, Quarles & Brady was retained by CropUSA to represent it in the negotiation and closing of a loan facility with Surge Capital ("Surge"). *See* Affidavit of James J. Gatziolis in Support of CropUSA's Response in Opposition to Plaintiff's Motion to Disqualify Attorneys ("Gatziolis Aff.") at ¶ 2. Before June 2006, Quarles & Brady had not represented CropUSA, AIA Insurance or AIA Services. *Id.* at ¶ 6.

At the closing of CropUSA's transaction with Surge, Quarles & Brady delivered an opinion letter dated October 27, 2006 to Lancelot Investors Fund, L.P. and AGM, LLC, which together, and along with other related investment funds, do business as Surge Capital. *Id.* at ¶ 3; *see also* Exhibit 18 to the Affidavit of Roderick C. Bond in Support of Disqualification ("Bond Aff."). The opinion letter was directed to third parties and was prepared as part of the closing of the Surge loan. Bond Aff. at Exhibit 18. The letter does not give advice to AIA Insurance. *Id.* Contrary to Plaintiff's implication, Quarles & Brady explicitly did not provide an opinion on AIA Insurance's authority to guarantee the Surge loan. Bond Aff. at Exhibit 18, at pp. 4-5.

Instead, Quarles & Brady opined on (a) the enforceability of the agreements documenting the loan, (b) the creation of a security interest in the collateral, (c) the legal status of the parties (*i.e.*, neither corporation is an investment company), and (d) compliance with federal regulations and State of Illinois laws. *Id.* at pp. 4-5. The opinion also contained certain statements regarding the firm's knowledge of the parties. *Id.*

Quarles & Brady's opinion was based on two critical assumptions: first, that AIA Insurance had the power and authority to own, lease and operate its current properties and assets as contemplated by the loan documents, which included the guaranty executed by AIA Insurance; and second, that the loan documents, including AIA Insurance's guaranty, and all transactions contemplated by those documents, were duly authorized by all necessary actions. *Id.* at p. 3.

As is made clear by the October 27, 2006 opinion letter, Quarles & Brady's representation was as special counsel for this specific transaction only. *Id.* at p. 1. Quarles & Brady's limited representation of AIA Insurance and John Taylor concluded with the issuance of the opinion letter. Gatziolis Aff. at ¶ 5. During its limited representation with respect to the Surge transaction, Quarles & Brady neither provided any advice to nor obtained any confidential information from AIA Insurance or John Taylor as the individual guarantor. *Id.* Moreover, the entire basis for the Surge loan facility was comprised of CropUSA's assets and assets pledged to CropUSA by third-parties other than AIA Insurance. *Id.* at ¶ 4.

Hudson Insurance Company ("Hudson") purchased the Surge loan on August 11, 2008 and released CropUSA of all obligations under the Surge loan as part of the consideration for the purchase of CropUSA assets on August 29, 2008. *Id.* at ¶ 8. Aside from its representation of CropUSA with respect to the now extinguished Surge loan, Quarles & Brady was not involved in

any of the so-called "related party transactions" described in Plaintiff's motion to disqualify and the affidavit of Paul E. Pederson. *Id.* at ¶ 7.

Several months after the closing of the Surge loan, on January 13, 2007, CropUSA contacted Quarles & Brady again. *Id.* at ¶ 9. John Taylor, the CEO of CropUSA, and Mel Gilbert, an investment banker responsible for putting CropUSA and Surge together, telephoned Mr. Gatziolis of Quarles & Brady and asked him to fly from Chicago, Illinois to Lewiston, Idaho to assist in resolving issues that had arisen with Reed Taylor. *Id.* In an effort to assist CropUSA, Mr. Gatziolis facilitated settlement discussions with Reed Taylor from mid-January 2007 until early February 2007. *Id.* at ¶ 10.

The settlement discussions were unsuccessful, and Reed Taylor filed this litigation. Shortly after the filing of the lawsuit, in February 2007, Quarles & Brady ceased its involvement in the settlement discussions. Gatziolis Aff. at ¶ 11. Mr. McNichols appeared on behalf of the defendants in the litigation. *Id.* Despite the filing of the lawsuit, CropUSA's relationship with Surge remained intact, and neither Mr. Gatziolis nor Quarles & Brady did any work relating to the litigation or relating to AIA Insurance or AIA Services after May 2, 2007 and before October 2007 when CropUSA was added as a defendant. *Id.* at ¶ 12.

After CropUSA was added as a defendant, CropUSA engaged Quarles & Brady to represent it in this litigation. Id. at ¶ 13. Mr. Gatziolis and Charles E. Harper, Jr. of Quarles & Brady moved for a limited admission and filed an appearance of limited admission on behalf of CropUSA only. *Id.* at ¶ 13. Quarles & Brady did not appear and has not appeared on behalf of any other defendant. *Id.*

In May 2008, the parties to this litigation were engaged in settlement discussions. *Id.* at ¶ 14. During the course of the negotiations, Mr. Bond specifically asked Mr. Gatziolis to present

the defendants' joint response to Reed Taylor's multi-faceted demand. *Id.* Mr. Gatziolis agreed, and he worked with counsel for the other defendants to present a settlement proposal addressing each of Reed Taylor's demands. *Id.* During this time, in response to the direct request of Mr. Bond, while Mr. Gatziolis certainly acted as a messenger for the other defendants, he did not represent or counsel AIA Insurance, AIA Services or any other defendant. *Id.*

III. ARGUMENT

A. Standard For Disqualification.

"The decision to grant or deny a motion to disqualify counsel is within the discretion of the court." *Crown v. Hawkins Co.*, 128 Idaho 114, 122, 910 P.2d 786, 794 (Ct. App. 1996), *citing Weaver v. Millard,* 120 Idaho 692, 698, 819 P.2d 110 (Ct. App. 1991). The party moving for disqualification of counsel has the burden of establishing grounds for the disqualification. *Crown*, 910 P.2d at 794. The court's goal in exercising its discretion should be to shape a remedy that will "assure fairness to the parties and the integrity of the judicial process," which includes taking into consideration the potential burden on the client. *Id.* at 795 (affirming the trial court's determination that the prejudice to the client of removing his counsel shortly before the trial date "outweighed any potential ethical violation").

Additionally, a court should take into consideration the source of the motion to disqualify. Where, as here, "the motion to disqualify comes not from a client or former client of the attorney, but from an opposing party, the motion should be reviewed with caution." *Id.* Disqualification motions brought by an opposing party are disfavored and involve a higher standard of proof because they are "often made for tactical reasons, may result in unnecessary delay, and interfere with a party's right to employ counsel of its choice." *Cohen v. Acorn International. LTD.*, 921 F. Supp. 1062, 1063-64. (S.D.N.Y. 1995); *see also Richardson-Merrell,*

Inc. v. Koller, 472 U.S. 424, 436 (1985) (stating that courts should act with caution in considering motions to disqualify because of the "concern about 'tactical use of disqualification motions' to harass opposing counsel.").

Further, courts should take into consideration the promptness with which a complaining party has brought a motion to disqualify. *See Schneider v. Curry*, 106 Idaho 264, 266, 678 P.2d 56, 58 (Ct. App. 1984) ("A motion to disqualify [an attorney] is of equitable nature, and a party making the motion should do so with reasonable diligence and promptness after the facts have become known."). A failure to act promptly warrants denial of the motion. *Weaver,* 120 Idaho at 698; *see also Crown*, 910 P.2d at 795 (stating that a motion to disqualify should be filed with promptness and reasonable diligence; and a failure to act promptly can warrant denial of the motion).

B. Quarles & Brady Has Not Aided And Abetted Any Alleged Wrongdoing By Any Of The Defendants.

Plaintiff suggests that Quarles & Brady's representation of CropUSA in this litigation amounts to "aiding and abetting" the allegedly wrongful acts of CropUSA's co-defendants in this litigation. *See, e.g.*, Motion to Disqualify at p. 50. That argument is not only wrong, it would be dangerous if accepted by the Court because it is flatly inconsistent with Quarles & Brady's obligation to zealously represent its client. To see the mischievous effect of Plaintiff's argument in its starkest form, consider its impact in a criminal trial, where "aiding and abetting" charges are most frequently found: if defending a client against allegations that it had acted wrongfully amounts to "aiding and abetting" the client's actions regardless of whether those actions are ultimately found to be wrongful, then all defense attorneys would be guilty and, accordingly, every criminal defense attorney would be in jail. Plaintiff's argument should therefore be rejected as being in direct conflict with a lawyer's duty to zealously represent his client within

the bounds of the law. IRPC Preamble, ¶ 9 ("These principles include the lawyer's obligations, as an advocate, to zealously protect and pursue a client's legitimate interests within the bounds of the law. . .").

Before June 2006, Quarles & Brady had no involvement with any of the defendants in this litigation. Gatziolis Aff. at ¶ 6. Accordingly, Quarles & Brady was not and could not have been involved in any of the "related party transactions" that occurred before June 2006. Plaintiff does not allege that Quarles & Brady had any involvement with the allegedly fraudulent September 2007 pledge of AIA Insurance's mortgage to CropUSA. *See* Motion to Disqualify, pp. 24-25. Aside from the extinguished Surge loan facility, the other actions by the defendants alleged by Plaintiff to have been wrongful or fraudulent occurred prior to June 2006. *Id.*, pp. 4-5, 15-16; *see also* Gatziolis Aff. at ¶ 7.

C. The Joint Defense Agreement Does Not Create An Attorney-Client Relationship Where None Otherwise Exists.

A fundamental assumption of Plaintiff's Motion to Disqualify is that Quarles & Brady owes all the obligations of an attorney-client relationship to every defendant in this matter by virtue of their participation in the joint defense agreement, despite the fact that Quarles & Brady only represents CropUSA. Plaintiff's assumption is incorrect because, as a matter of law, joint defense agreements do not give rise to an attorney-client relationship. *U.S. v. Alameida*, 341 F.3d 1318, 1323 (11th Cir. 2003) (stating that joint defense agreements do not create an attorney-client relationship or give rise to a duty of loyalty); *U.S. v. Schwimmer*, 892 F.2d 237, 243 (2nd Cir. 1989) (stating that the joint defense or common interest privilege merely protects "the confidentiality of communications passing from one party to the attorney for another party where a joint defense effort has been decided upon and undertaken by the parties and their respective counsel"); *U.S. v. Stepney*, 246 F.Supp.2d 1069, 1079-80 (N.D. Cal. 2003) (stating that a joint

defense agreement does not create the same obligations as an attorney-client relationship; while a joint defense agreement gives rise to a duty of confidentiality, it does not give rise to a duty of loyalty); *Essex Chemical Corp. v. Hartford Acc. & Indem. Co.*, 993 F.Supp. 241, 253 (D.N.J. 1998) (holding that a joint defense agreement does not give rise to an attorney-client relationship between all counsel and all members of the joint defense agreement).

The joint defense privilege is as an extension of the attorney-client privilege to protect confidential communications disclosed to co-defendants and their counsel for purposes of a common defense. *Stepney*, 246 F.Supp.2d at 1074-75. Joint defense agreements do not create a duty of loyalty, because co-defendants under the agreement have retained their own counsel. Instead, "confidential communications made during joint defense strategy sessions are privileged." *Alameida*, 341 F.3d at 1323 (11th Cir. 2003); *see also Schwimmer*, 892 F.2d at 243; *Stepney*, 246 F.Supp.2d at 1075 (stating that a joint defense agreement imposes on an attorney a "limited duty of confidentiality toward their client's co-defendants regarding information obtained in furtherance of a common defense."). Significantly, the duty of confidentiality created as a result of a joint or common defense agreement is not absolute, but is limited to "[o]nly those communications made in the course of an ongoing common enterprise and intended to further the enterprise. . .". *Id.* Moreover, courts have acknowledged that, at times, members to a joint defense agreement have interests adverse to the other members. *Essex Chemical Corp.*, 993 F.Supp. at 252. Accordingly, even in those instances in which the interests of the defendants were divergent from one another, that would not prevent the parties from entering into joint defense agreements with one another for purposes of defending their common interests.

When a party is seeking disqualification based on a joint defense agreement, the burden is on the party seeking disqualification to demonstrate that confidential information was actually obtained pursuant to a joint defense agreement. *Stepney*, 246 F.Supp.2d at 1076. Additionally, the burden on the party seeking disqualification is higher when alleging a conflict based on a joint defense agreement than it is when a conflict is alleged based on actual representation of a party. *Id.* at 1076. Plaintiff has not met this burden under either standard because he has neither demonstrated that confidential information was obtained as a result of the joint defense agreements, nor has he shown that a conflict exists between the defendants in this litigation (*see, infra*, Sections III.D. and III.E).

Plaintiff has not been and will not be harmed by CropUSA's participation in the joint defense agreement, because CropUSA cannot obtain confidential information through the joint defense agreement that would not otherwise have been available to it. AIA Insurance is a wholly-owned subsidiary of AIA Services, and one of CropUSA's directors, John Taylor, is also a director of AIA Insurance and AIA Services. Another CropUSA director, JoLee Duclos, is a former director of AIA Insurance and AIA Services. Any confidential information John Taylor possesses from AIA Insurance and AIA Services will *necessarily* be accessible to CropUSA, and *vice versa*, even if no joint defense agreement had ever been executed.

D. There Is No Conflict With Quarles & Brady's Continued Representation Of CropUSA Under A Current Client Analysis, And The "Hot Potato Rule" Is Inapplicable.

1. IRPC Rule 1.7 Is Not Applicable Here Because Quarles & Brady Only Represents CropUSA.

In order for a conflict to exist pursuant to IRPC Rule 1.7, Quarles & Brady would have to *concurrently* represent multiple parties in this litigation. Quarles & Brady, however, has exclusively represented CropUSA ever since appearing in this litigation: (1) Quarles & Brady

has never filed an appearance on behalf of any party other than CropUSA in this litigation; (2) Quarles & Brady has never performed any work on behalf of any party other than CropUSA since appearing in this litigation; and (3) Quarles & Brady's fees have never been paid by any party other than CropUSA. Because Quarles & Brady is not concurrently representing (nor since appearing in this case has it ever concurrently represented) any of the defendants other than CropUSA, IRPC Rule 1.7 is inapplicable.

The "hot potato" doctrine is also inapplicable because Quarles & Brady did not cease representation of any of the other defendants so that it could represent CropUSA in this litigation. Plaintiff claims that the "hot potato" rule requires Quarles & Brady to be disqualified from representing CropUSA, because, according to Plaintiff, Quarles & Brady previously represented AIA Insurance or AIA Services in three ways:

> (1) Quarles & Brady partner James Gatziolis acted as spokesperson for all of the defendants in settlement negotiations with Plaintiff which took place in May and June 2008 (*see* Motion to Disqualify, p. 20);
>
> (2) Quarles & Brady prepared an opinion letter in October 27, 2006 for the Surge loan facility, of which AIA Insurance was a guarantor (*see id.*, pp. 5-6, 18); and
>
> (3) Mr. Gatziolis facilitated the pre-litigation settlement discussions which took place in January and February 2007 (*see id.*, pp. 6-7, 18-19).

All of these purported representations ended before any allegation of conflict was raised, and none of them is sufficient to apply the "hot potato rule" or to conclude that Quarles & Brady currently represents AIA Insurance or AIA Services.

a. Settlement Negotiations In May And June 2008.

In May 2008, Plaintiff and defendants engaged in settlement discussions. *At the specific request of Plaintiff's counsel*, Roderick Bond, James Gatziolis (a partner of Quarles & Brady and one of the lawyers for CropUSA) agreed to act as spokesperson for all of the defendants for

purposes of settlement negotiations. Gatziolis Aff. at ¶ 14. Having invited Mr. Gatziolis to play the role of peacemaker, Mr. Bond now seeks to punish him, his firm and his client for doing exactly what Mr. Bond originally requested that he do. Plaintiff's failure to inform the Court that Mr. Gatziolis acted as spokesperson at Mr. Bond's express request further underscores Plaintiff's bad faith in bringing this motion.

b. The October 27, 2006 Opinion Letter.

Quarles & Brady was originally engaged to represent CropUSA in connection with a loan being negotiated with Surge. Gatziolis Aff. at ¶¶ 2, 6. In connection with that loan, Surge requested that CropUSA obtain a guarantee of the loan from AIA Insurance. Although AIA Insurance provided the guaranty, the entire basis for the loan facility consisted of (a) CropUSA assets and (b) assets pledged to CropUSA by third parties other than AIA Insurance. *Id.* at ¶ 4. Quarles & Brady represented AIA Insurance only as special counsel for the purpose of delivering the opinion letter to Surge at the closing of the CropUSA-Surge transaction. In providing that opinion letter, Quarles & Brady specifically assumed, without opining, that AIA Insurance and CropUSA had the requisite authority to execute their respective loan documents. Bond Aff. at Exhibit 18, at p. 3. In preparing the opinion letter, Quarles & Brady did not offer any advice to AIA Insurance, and Quarles & Brady did not acquire any confidential information of AIA Insurance. Gatziolis Aff. at ¶ 5. If providing the opinion letter under these circumstances created an attorney-client relationship, Quarles & Brady's representation of AIA Insurance was limited in both scope and time.

Moreover, Hudson purchased the Surge loan facility on August 11, 2008 and, as part of the consideration for that purchase, released CropUSA of all obligations under the Surge loan facility. Accordingly, Quarles & Brady's "special-counsel" representation of AIA Insurance in

connection with the issuance of the opinion letter dated October 27, 2006 to Surge does not give rise to application of the "hot potato" rule because (a) the representation was in the past, (b) it was immaterial to this litigation, and (c) it was for a discrete purpose and period of time. *See Buehler v. Sbardellati*, 34 Cal.App.4th 1527, 1540 (1995) (upholding finding of no conflict where attorney represented two clients for discrete transaction where the clients had common goals in the transaction, even though dealings between two clients had potential to later become adversarial).

c. January/February 2007 Pre-Litigation Settlement Discussions.

Quarles & Brady's participation in the settlement negotiations which took place in January and February 2007 was undertaken at the request of and on behalf of CropUSA. Gatziolis Aff. at ¶¶ 9-10. On January 13, 2007, Mr. Taylor, the CEO of CropUSA and Mel Gilbert (the investment banker who originally put CropUSA in contact with Surge) telephoned Mr. Gatziolis and asked him to travel to Lewiston, Idaho to assist in facilitating a resolution to the issues that had arisen with Reed Taylor. *Id.* at ¶ 9. Mr. Taylor and Mr. Gilbert were concerned that Reed Taylor's threatened lawsuit could jeopardize CropUSA's relationship with Surge and place the loan facility in default. *Id.*

During the time that Mr. Gatziolis worked to facilitate a settlement with Reed Taylor, he understood that he was doing so on behalf of and for the benefit of CropUSA. *Id.* at ¶ 10. Quarles & Brady's fees were paid entirely by CropUSA. *Id.* Mr. Gatziolis participated in the settlement discussions with Reed Taylor from mid-January 2007 until early February 2007 with the primary objective of resolving the issues with Reed Taylor so that CropUSA could preserve its relationship with Surge. *Id.*

Mr. Gatziolis' participation in the settlement discussions with Reed Taylor lasted only until early February 2007. *Id.* at ¶¶ 10, 12. During the course of these early 2007 discussions, Mr. Gatziolis assisted AIA Insurance in responding to Reed Taylor's demand for a shareholders' meeting and assisted in drafting a written settlement proposal. *Id.* at ¶ 11. Even if the Court were to conclude that Mr. Gatziolis' participation in settlement negotiations in early 2007 amounted to joint representation of AIA Insurance and AIA Services, and CropUSA, the Court should also conclude that that representation ended in February 2007, when Mr. Gatziolis ceased his participation in the settlement discussions. At the very latest, the purported joint representation ended on May 2, 2007, months before Quarles & Brady would be asked to represent CropUSA in this litigation. *Id.* at ¶¶ 12-13. As a result, the hot potato rule would not apply, because Quarles & Brady did not "drop the representation of any one or more of the defendants to remain counsel for another defendant." *See* Motion to Disqualify, p. 34. Moreover, as discussed in the next section, AIA Insurance's and AIA Services' status as *former* clients (were this Court to so find) would not preclude Quarles & Brady's representation of CropUSA today.

E. There Is No Conflict With Quarles & Brady's Continued Representation Of CropUSA Under A Former Client Analysis.

IRPC Rule 1.9 describes an attorney's duties to former clients. It states in relevant part as follows:

> (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Disqualification of Quarles & Brady is not warranted because the purported prior representation is not "substantially related" to the subject matter of this litigation, and because

the interests of AIA Insurance and AIA Services are not "materially adverse" to the interests of CropUSA.

1. The Prior Representation Cannot Pass The Substantial Relationship Test.

In order for this Court to exercise its discretion to disqualify Quarles & Brady under Rule 1.9, this Court must find the prior representation and the current representation are "substantially related." The "substantially related" test centers on whether Quarles & Brady obtained confidential information from AIA Insurance or AIA Services during its previous representations and whether that information is relevant to the present matter. "[T]he most important facet of the professional relationship served by this rule . . . is the preservation of secrets and confidences communicated to the lawyer by the client." *Christensen v. United States District Court for the Central District of California*, 844 F.2d 694, 698 (9th Cir. 1988); *see also LaSalle Nat'l Bank v. County of Lake*, 703 F.2d 252, 255-56 (7th Cir. 1983) (setting forth a three part test to determine if substantial relationship exists: "First, the trial judge must make a factual reconstruction of the scope of the prior legal representation. Second, it must be determined whether it is reasonable to infer that the confidential information allegedly given would have been given to a lawyer representing a client in those matters. Third, it must be determined whether that information is relevant to the issues raised in the litigation pending against the former client.").

In this case, there is no basis to disqualify Quarles & Brady because John Taylor and JoLee Duclos were two of the three directors of AIA Insurance and AIA Services during Quarles & Brady's purported former representation of those parties, and both Mr. Taylor and Ms. Duclos are directors of CropUSA now. Therefore, Quarles & Brady would not be in a position to be able to give CropUSA any confidential information it obtained from its prior representation of AIA Insurance and AIA Services that CropUSA does not already possess. Put another way, the

danger that Rule 1.9 protects against -- a lawyers' communication of the former client's confidential information to the current client -- is not present in this case.

Plaintiff has the burden of proof on his Motion to Disqualify, but he has not identified a single piece of confidential information that he believes Quarles & Brady possesses by virtue of the former representation of AIA Insurance or AIA Services. More importantly, Plaintiff cannot explain how Quarles & Brady obtained confidential information from AIA Insurance and AIA Services that CropUSA does not already have. Courts decline to find substantial relatedness even in situations where confidential information of the former client was in the possession of the attorney. *See, e.g., Freiburger v. JUB Engineers, Inc.*, 141 Idaho 415, 111 P.3d 100, 108 (2005) (affirming lower court's denial of motion to disqualify where the plaintiff's counsel had previously been retained by defendant on a regulatory matter unrelated to the non-compete clause at issue in the litigation, even though plaintiff's counsel had acquired the defendant's confidential information). Here, where Quarles & Brady cannot have confidential information that CropUSA does not have, this Court should decline to disqualify Quarles & Brady.

2. Neither AIA Insurance's Nor AIA Services' Interests Are "Materially Adverse" To The Interests Of CropUSA.

AIA Insurance and AIA Services are not materially adverse to CropUSA in this litigation, because the parties' interests in defending this litigation are currently aligned. As demonstrated by the joint defense agreement, the parties themselves certainly believe their interests to be aligned. In the event that they were to become adverse at some point in the future, their interests are adequately protected by the standstill and tolling agreements in place between the parties. As a result, and as discussed in the next section, even if the Court were to conclude at some point in the future that the defendants' interests might become adverse to one another, Quarles & Brady's

representation of CropUSA at this stage of the litigation would still be appropriate because the potential conflict is waivable.

3. None Of The Alleged Conflicts Are Unwaivable.

All of the alleged conflicts between CropUSA and the other corporate defendants are waivable. The Plaintiff's Motion to Disqualify and the supporting Affidavit of Peter R. Jarvis consist primarily of bare legal conclusions that any alleged conflicts of interest among the corporate defendants are "irreconcilable," "unconsentable," or "not waivable." Plaintiff simply assumes that there can be no joint representation because "each of the defendant's interests are irreconcilably divergent and are in direct conflict." Motion to Disqualify at p. 33. Plaintiff also summarily assumes that "the conflicts between [the corporate defendants] are so irreconcilable that such conflicts are nonconsentable under RPC 1.7." *Id.* at p. 38. *See also* Jarvis Affidavit at ¶¶ 4.a., 5.c., 5.d.

Mr. Jarvis is not the judge in this case, and his legal conclusions should not to be given any weight whatsoever, because experts are not permitted to give opinions as to their legal conclusions or as to ultimate issues of law. *See Nationwide v. Cass Info.*, 523 F.3d 1051, 1058 (9th Cir. 2008); *Washakie v. U.S.*, 2006 WL 293884, at *3 (D. Idaho October 13, 2006) (striking certain opinions of expert because they offered improper legal conclusions); *Summers v. A.L. Gilbert Co.*, 69 Cal. App. 4th 1155, 1160, 82 Cal. Rptr. 2d 162 (1999) ("Both state and federal courts have held that expert testimony on issues of the law are not admissible since it is the judge's responsibility to instruct . . . on the law -- not that of the witness.").

Importantly, the issue of unwaivable conflicts does not arise under an IRPC Rule 1.9 analysis, and, as explained in detail above, Quarles & Brady is not concurrently representing multiple parties in the litigation. However, even assuming an analysis under IRPC Rule 1.7

applies, there are no unwaivable conflicts between defendants. Under Rule 1.7(b), there are two types of concurrent conflicts of interest that cannot be waived through informed client consent: (i) if the representation is prohibited by applicable law; or (ii) if the representation involves a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before the tribunal -- *i.e.*, when the clients are directly adverse in the same proceeding. IRPC 1.7(b)(2), (3) and cmts 16, 17. Neither of these two situations exists in the present case. Even if Quarles & Brady were concurrently representing all defendants in this matter, none of the defendants have alleged any claims against any other defendant.

Accordingly, if this Court were to find that Quarles & Brady previously represented AIA Insurance or AIA Services in a substantially related matter and also find that AIA Insurance's or AIA Services' interest is materially adverse to CropUSA's interest in this litigation, Quarles & Brady should still be permitted to obtain the informed consent of AIA Insurance and AIA Services to continue its representation of CropUSA.

F. Plaintiff's Motion to Disqualify Should Be Denied As Untimely.

A party's failure to promptly bring a motion for disqualification after learning of the facts allegedly giving rise to the disqualification warrants denial of the motion. *Crown*, 910 P.2d at 795 (affirming the denial of a motion to disqualify where moving party "did not act with promptness and reasonable diligence in filing the motion"); *Weaver*, 819 P.2d at 116 (upholding lower court's denial of motion to disqualify where plaintiff delayed in bringing motion for nearly a year); *see also Schneider*, 678 P.2d at 58 ("A motion to disqualify [an attorney] is of equitable nature, and a party making the motion should do so with reasonable diligence and promptness after the facts have become known."). Plaintiff's motion should be denied because of his failure to promptly object to Quarles & Brady's representation of CropUSA, especially because Plaintiff

was aware all along of Quarles & Brady's role in the pre-litigation settlement discussions in January and February 2007.

Quarles & Brady requested limited admission to represent CropUSA in this matter in November 2007. Although he earlier alleged other attorneys in this case might have conflicts, Plaintiff first alleged that Quarles & Brady had a purported conflict in August 2008. Bond Aff. at Exhibit 22. Yet, even though he was aware of the facts he now claims give rise to the conflict, Plaintiff did not file his Motion to Disqualify until September 2008 -- ten months after Quarles & Brady appeared for CropUSA in the litigation. During those ten months, CropUSA and Quarles & Brady have expended significant time and resources for Quarles & Brady to learn the case, prepare pleadings, review documents, participate in discovery, engage in motion practice and prepare the case for trial, which, until recently, was scheduled for October 20, 2008.

Under similar circumstances in the *Weaver* decision, the court upheld the trial court's determination that the plaintiff's motion to disqualify counsel was untimely. 910 P.2d at 795. For example, like the situation in this case, the *Weaver* court noted that counsel had filed its answer on behalf of its client on July 31, 1987, but the plaintiff did not move for disqualification until just over a year later on September 8, 1988, after discovery was commenced and motions for summary judgment were pending. *Id.* The court found that "any possible prejudice to the [plaintiff] was far outweighed by the possible prejudice to [counsel and client] of having to obtain new counsel." *Id.* Similarly, here, CropUSA would be prejudiced by having to obtain new counsel, especially because Plaintiff has no excuse for his delay.

Plaintiff filed a motion to disqualify Clements, Brown & McNichols on February 26, 2007, before CropUSA was even a party to the litigation. Plaintiff's motion to disqualify Clements, Brown & McNichols was based on the allegations that Clements, Brown &

McNichols was not authorized to represent AIA Insurance because Plaintiff had exercised his alleged right to vote his shares of AIA Insurance. Motion to Disqualify, p. 8. Plaintiff now suggests in his Motion to Disqualify that his delay in moving for disqualification of Quarles & Brady is justified because he believed that he was required to address the issue of disqualification with the Idaho State Bar. *See* Motion to Disqualify, p. 8; Bond Aff. at ¶¶ 66-70. However, even if he were justified in that belief, Plaintiff's disqualification efforts are untimely: Mr. Bond admits in his affidavit that he did not even go to the Idaho State Bar until *after* the motion for summary judgment was filed against Plaintiff. *Id.*

Plaintiff cites only a single Nevada case where the court excused a delay in bringing a motion to disqualify, but in that case, unlike the facts here, both counsel and client were on notice of a potential conflict and disqualification at the commencement of the case. *Nevada Yellow Cab Corp. v. Eighth Judicial District Court of Nevada, County of Clark*, 152 P.3d 737, 740, 123 Nev. 44 (Nevada 2007). The plaintiff in *Nevada Yellow Cab* explicitly preserved its right to file a motion to disqualify, pending the outcome of mediation between the parties. *Id.* When mediation failed, the plaintiff promptly filed a motion to disqualify. *Id.* Even under those facts, the reviewing court noted that it was a "close case" because the moving party waited so long "after appreciating the perceived conflict before formally seeking disqualification." *Id.* at 743. Unlike counsel in *Nevada Yellow Cab*, neither CropUSA nor Quarles & Brady were put on notice of Plaintiff's belief that Quarles & Brady should be disqualified from representing CropUSA in November 2007 when Quarles & Brady first requested limited admission to appear in the case. Instead, the first Quarles & Brady heard of Plaintiff's intent to disqualify it as counsel was in August 2008, nine months after Plaintiff was aware of Quarles & Brady's intention to represent CropUSA in this matter.

Granting Plaintiff's motion now would prejudice CropUSA. By contrast, the only "harm" that Plaintiff would suffer from having his motion denied is that he and his counsel will have to continue to proceed to trial and prove their claims before this Court. That is not harm -- it is the basis of our adversary legal system.

For the foregoing reasons, Plaintiff's motion should be denied and CropUSA should be awarded its costs.

DATED this 13th day of October, 2008.

HAWLEY TROXELL ENNIS & HAWLEY

By: _____
Gary D. Babbitt, ISB No. 1486
Attorneys for Attorneys for AIA Services Corporation, AIA Insurance, Inc., and CropUSA Insurance Agency, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2008, I caused to be served a true copy of the foregoing **CropUSA Insurance Agency, Inc.'s Response in Opposition to Plaintiff's Motion to Disqualify Attorneys**, by the method indicated below, and addressed to each of the following:

Roderick C. Bond Ned A. Cannon Smith, Cannon & Bond PLLC 508 Eighth Street Lewiston, ID 83501 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy ✓ Email
Michael S. Bissell Campbell, Bissell & Kirby, PLLC 416 Symons Building 7 South Howard Street Spokane, WA 99201 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy ✓ Email
David A. Gittins Law Office of David A. Gittins P.O. Box 191 Clarkston, WA 99403 [Attorney for Defendants Duclos and Freeman]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy ✓ Email
Michael E. McNichols Clements Brown & McNichols 321 13th Street Lewiston, ID 83501 [Attorneys for Defendant R. John Taylor]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy ✓ Email
David R. Risley Randall, Black & Cox, PLLC P.O. Box 446 1106 Idaho Street Lewiston, ID 83501 [Attorneys for Defendants Connie Taylor, James Beck and Corrine Beck]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy ✓ Email
Charles A. Brown Attorney at Law P.O. Box 1225 Lewiston, ID 83501 [Attorneys for AIA Services 401(k) Plan]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy ✓ Email

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jash@hteh.com

Attorneys for Defendant CropUSA Insurance Agency, Inc.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED. J. TAYLOR, a single person; Plaintiff, vs. AIA SERVICES CORPORATION, an Idaho Corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the Community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof, Defendants.	Case No. CV 07-00208 AFFIDAVIT OF JAMES J. GATZIOLIS IN SUPPORT OF CROPUSA'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO DISQUALIFY ATTORNEYS

AIA SERVICES CORPORATION, an Idaho corporation; and AIA INSURANCE, INC., an Idaho corporation,

Counterclaimants,

vs.

REED J. TAYLOR, a single person,

Counterdefendant.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, James J. Gatziolis, being first duly sworn and on oath, do hereby depose and say:

1. I am a partner of the law firm of Quarles & Brady LLP.

2. In June 2006, Quarles & Brady LLP was retained by CropUSA to represent it in the negotiation and closing of a loan facility with Surge Capital ("Surge").

3. In connection with this representation of CropUSA and at the closing of the Surge transaction, Quarles & Brady LLP delivered the October 27, 2006 opinion letter attached as Exhibit 18 to the Affidavit of Roderick C. Bond in Support of Disqualification.

4. The entire basis for the Surge loan facility was comprised of CropUSA's assets and assets pledged to CropUSA by third-parties other than AIA Insurance.

5. During the transaction between CropUSA and Surge, Quarles & Brady provided no legal advice to AIA Insurance or to John Taylor as the individual guarantor. In preparing the opinion letter, Quarles & Brady obtained no confidential information from AIA Insurance or John Taylor as the individual guarantor. Quarles & Brady's special representation of AIA Insurance and John Taylor concluded once the opinion letter was issued. Quarles & Brady's fees were paid by CropUSA.

6. Prior to June 2006, Quarles & Brady LLP neither represented nor otherwise did any work on the behalf of CropUSA, AIA Insurance, Inc. or AIA Services Corporation.

7. With the exception of the above-described CropUSA-Surge transaction, Quarles & Brady was not involved in any of the "related party transactions" described in Plaintiff's motion to disqualify and the Affidavit of Paul E. Pederson.

8. Hudson Insurance Company ("Hudson"), purchased the Surge loan facility on August 11, 2008 and released CropUSA of all obligations under the Surge loan facility as part of the consideration for the purchase of CropUSA assets on August 29, 2008.

9. On January 13, 2007, John Taylor, the CEO of CropUSA, and Mel Gilbert, an investment banker who originally put CropUSA and Surge together, telephoned me on January 13, 2007 and requested that I fly from Chicago, Illinois to Lewiston, Idaho to assist in facilitating a resolution to the issues that had arisen with Reed Taylor. Mr. Taylor and Mr. Gilbert were concerned that Reed Taylor's threatened lawsuit could jeopardize CropUSA's relationship with Surge and would place the loan facility in default.

10. I participated in settlement discussions with Reed Taylor from mid-January 2007 until early February 2007 with the primary objective of resolving the issues with Reed Taylor so that CropUSA could preserve its relationship with Surge. During the time I was attempting to facilitate a settlement with Reed Taylor, I understood that I was doing so on the behalf of and for the benefit of CropUSA, and Quarles & Brady's fees were paid entirely by CropUSA.

11. During the course of these early 2007 discussions, I assisted AIA Insurance in responding to Reed Taylor's demand for a shareholders' meeting and assisted in drafting a written settlement proposal. In February 2007, Quarles & Brady ceased its involvement in the settlement discussions, and Michael E. McNichols appeared on the behalf of the then defendants.

12. Despite the filing of this lawsuit, the relationship between CropUSA and Surge remained intact. Neither I nor Quarles & Brady did any work relating to the litigation or related in any way to AIA Insurance or AIA Services after May 2, 2007 and before October 2007 when CropUSA was added as a defendant.

13. After CropUSA was named as a defendant in this case, I was contacted by John Taylor, who asked Quarles & Brady to represent CropUSA in this litigation. Quarles & Brady's attorneys then moved for a limited admission and filed their appearances of limited admission in this litigation on the behalf of CropUSA. Quarles & Brady did not then and has not since appeared on the behalf of any other party in this case. Quarles & Brady's fees for its work in this litigation are paid by CropUSA.

14. During the course of settlement discussions between the parties to this litigation in May 2008, Rod Bond requested that I personally present the defendants' response to Reed Taylor's multiple-item demand. In response to Mr. Bond's direct request that I be the spokesperson for the defendants during these settlement negotiations, I agreed to do so. In accordance with Mr. Bond's request, I presented the defendants' joint response to Reed Taylor's demand. To present the joint response, I conferred with counsel for the defendants, but I did not advise any party other than CropUSA with respect to the joint settlement proposal or any other matter.

DATED this 13th day of October, 2008.

By: _____
James J. Gatziolis

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

Subscribed and sworn to before me this 13th day of October, 2008.

Cheryl McLaughlin
Notary Public

OFFICIAL SEAL
CHERYL A MCLAUGHLIN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/10/12

My Commission Expires:
9/10/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2008, I caused to be served a true copy of the foregoing **Affidavit of James J. Gatziolis in Support of CropUSA's Response in Opposition to Plaintiff's Motion to Disqualify Attorneys**, by the method indicated below, and addressed to each of the following:

Roderick C. Bond Ned A. Cannon Smith, Cannon & Bond PLLC 508 Eighth Street Lewiston, ID 83501 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
Michael S. Bissell Campbell, Bissell & Kirby, PLLC 416 Symons Building 7 South Howard Street Spokane, WA 99201 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
David A. Gittins Law Office of David A. Gittins P.O. Box 191 Clarkston, WA 99403 [Attorney for Defendants Duclos and Freeman]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
Michael E. McNichols Clements Brown & McNichols 321 13th Street Lewiston, ID 83501 [Attorneys for Defendant R. John Taylor]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
David R. Risley Randall, Black & Cox, PLLC P.O. Box 446 1106 Idaho Street Lewiston, ID 83501 [Attorneys for Defendants Connie Taylor, James Beck and Corrine Beck]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
Charles A. Brown Attorney at Law P.O. Box 1225 Lewiston, ID 83501 [Attorneys for AIA Services 401(k) Plan]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email

James J. Gatziolis
Charles E. Harper, Jr.
QUARLES & BRADY LLP
500 West Madison Street, Suite 3700
Chicago, Illinois 60661-2511
[Attorneys for CropUSA Insurance Agency, Inc.]

____ U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
__✓__ Email

Gary D. Babbitt

DAVID R. RISLEY
RANDALL, BLAKE & COX, PLLC
P.O. Box 446
1106 Idaho Street
Lewiston, Idaho 83501
(208) 743-1234
(208) 743-1266 (Fax)
ISB No. 1789

FILED
2008 OCT 14 PM 3 04

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho Corporation; AIA INSURANCE, INC., an Idaho Corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof,

Defendants.

CONNIE W. TAYLOR and JAMES BECK,

Counterclaimants,

v.

REED J. TAYLOR, a single person,

Counterdefendant.

CASE NO. CV07-00208

JOINDER OF:

DEFENDANTS CONNIE TAYLOR, JAMES BECK AND CORRINE BECK

and

COUNTERCLAIMANTS CONNIE W. TAYLOR AND JAMES BECK

RE:

(1) DEFENDANT AIA'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL

(2) DEFENDANT R. JOHN TAYLOR'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL

(3) DEFENDANT CROPUSA INSURANCE AGENCY, INC.'S RESPONSE IN OPPOSITION TO PLAINITFF'S MOTION TO DISQUALIFY COUNSEL

Randall, Blake & Cox, PLLC
ATTORNEYS AT LAW
P.O. Box 446
Lewiston, ID 83501

3932

COMES NOW, Defendants Connie Taylor, James Beck and Corrine Beck, and Counterclaimants Connie W. Taylor and James Beck, join in opposition to *Plaintiff Reed Taylor's Motion to Disqualify The Attorneys and Law Firms of Hawley Troxell Ennis & Hawley LLP; Clements, Brown & McNichols, P.A. and Quarles & Brady LLP* and *Plaintiff Reed Taylor's Amended Motion to Disqualify The Attorneys and Law Firms of Hawley Troxell Ennis & Hawley LLP; Clements, Brown & McNichols, P.A. and Quarles & Brady LLP* incorporating, by reference, the following:

1. *AIA's Memorandum in Opposition to Motion to Disqualify Counsel*, filed and served by Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

2. *Affidavit of Gary D. Babbitt* and all exhibits thereto, filed and served by Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

3. *Affidavit of Jolee Duclos* and all exhibits thereto, filed and served by Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

4. *Affidavit of Patrick V. Collins* filed and served by Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

5. *Affidavit of Richard A. Riley* filed and served by Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

6. *Affidavit of John A. Strait* and all exhibit thereto, filed and served by Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

7. *Memorandum in Opposition to Plaintiff's Motion to Disqualify McNichols as Attorney for John Taylor* filed and served by Michael E. McNichols on or about October 10, 2008.

Randall, Blake & Cox, PLLC
ATTORNEYS AT LAW
P.O. Box 446
Lewiston, ID 83501

8. *Affidavit of Michael E. McNichols in Opposition to Plaintiff's Motion to Disqualify* filed and served by Michael E. McNichols on or about October 10, 2008.

9. *Expert Witness Affidavit of Thomas D. Morgan in Opposition to Plaintiff's Motion to Disqualify the Attorneys and Law Firm of Clements, Brown & McNichols, P.A.* and all exhibits thereto, filed and served by Michael E. McNichols on or about October 10, 2008.

10. *CROPUSA Insurance Agency, Inc.'s Response in Opposition to Plaintiff's Motion to Disqualify Attorneys* filed and served by James J. Gatziolis, Charles E. Harper, Jr., Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

11. *Affidavit of James J. Gatziolis in Support of CROPUSA's Response in Opposition to Plaintiff's Motion to Disqualify Attorneys* filed and served by James J. Gatziolis, Charles E. Harper, Jr., Gary D. Babbitt and D. John Ashby on or about October 10, 2008.

DATED this 14th day of October, 2008.

RANDALL, BLAKE & COX, PLLC
Attorneys for Defendants Connie Taylor, James Beck and Corrine Beck, and Counterclaimants Connie W. Taylor and James Beck

By: _____
DAVID R. RISLEY
ISB No. 1789

Randall, Blake & Cox, PLLC
ATTORNEYS AT LAW
P.O. Box 446
Lewiston, ID 83501

CERTIFICATE OF MAILING

I certify that on October 14, 2008, at my direction, the foregoing *Joinder of Defendants Connie Taylor, James Beck and Corrine Beck and Counterclaims Connie W. Taylor and James Beck re (1) Defendant AIA's Response in Opposition to Plaintiff's Motion to Disqualify Counsel, (2) Defendant R. John Taylor's Response in Opposition to Plaintiff's Motion to Disqualify Counsel, and (3) Defendant CROPUSA Insurance Agency, Inc.'s Response in Opposition to Plaintiff's Motion to Disqualify Counsel* was served on the following in the manner shown:

Counsel for Plaintiff: (copy)		
Roderick C. Bond	[ ]	U.S. Mail, Postage Prepaid
Smith, Cannon and Bond, PLLC	[ ]	Hand Delivery
508 8th Street	[ ]	Facsimile (208) 746-8421
Lewiston, ID 83501	[ ]	Overnight Mail/Federal Express
	[✓]	Email (rod@smithandcannon.com)
Counsel for Plaintiff: (copy)		
Michael S. Bissell	[ ]	U.S. Mail, Postage Prepaid
Campbell, Bissell & Kirby, PLLC	[ ]	Hand Delivery
7 South Howard Street, Suite 416	[ ]	Facsimile (509) 455-7111
Spokane, WA 99201-3816	[ ]	Overnight Mail/Federal Express
	[✓]	Email (mbissell@cbklawyers.com)
Counsel for AIA Services Corporation, AIA Insurance, Inc. and Crop USA: (copy)		
Gary D. Babbitt	[ ]	U.S. Mail, Postage Prepaid
D. John Ashby	[ ]	Hand Delivery
Hawley Troxell Ennis & Hawley, LLP	[ ]	Facsimile (208) 342-3829
877 Main Street, Suite 1000	[ ]	Overnight Mail/Federal Express
P.O. Box 1617	[✓]	Email (gdb@hteh.com & jash@hteh.com)
Boise, ID 83701-1617		
Counsel for Crop USA Insurance: (copy)		
James J. Gatziolis	[ ]	U.S. Mail, Postage Prepaid
Charles E. Harper	[ ]	Hand Delivery
Quarles & Brady, LLP	[ ]	Facsimile (312) 715-5155
500 West Madison Street, Suite 3700	[ ]	Overnight Mail/Federal Express
Chicago, IL 60661-2511	[✓]	Email (charper@quarles.com & jjg@quarles.com)

Randall, Blake & Cox, PLLC
ATTORNEYS AT LAW
P.O. Box 446
Lewiston, ID 83501

292C

CERTIFICATE OF MAILING (Continued)

Counsel for R. John Taylor: (copy)		
Michael E. McNichols	[ ]	U.S. Mail, Postage Prepaid
Clements, Brown & McNichols	[ ]	Hand Delivery
321 13th Street	[ ]	Facsimile (208) 746-0753
P.O. Box 1510	[ ]	Overnight Mail/Federal Express
Lewiston, ID 83501	[✓]	Email (mmcnichols@clbrmc.com)
Counsel for Duclos and Freeman: (copy)		
David A. Gittins	[ ]	U.S. Mail, Postage Prepaid
Attorney at Law	[ ]	Hand Delivery
843 Seventh Street	[ ]	Facsimile (509) 758-3576
Clarkston, WA 99403	[ ]	Overnight Mail/Federal Express
	[✓]	Email (david@gittinslaw.com)
Counsel for AIA Services 401(K) Plan: (copy)		
Charles A. Brown	[ ]	U.S. Mail, Postage Prepaid
Attorney at Law	[ ]	Hand Delivery
P. O. Box 1225	[ ]	Facsimile (208) 746-5886
Lewiston, ID 83501	[ ]	Overnight Mail/Federal Express
	[✓]	Email (CharlesABrown@cableone.net)

DAVID R. RISLEY

Randall, Blake & Cox, PLLC
ATTORNEYS AT LAW
P.O. Box 446
Lewiston, ID 83501

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CLC

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PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

ORIGINAL

Gary D. Babbitt, ISB No. 1486
D. John Ashby, ISB No. 7228
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: (208) 344-6000
Facsimile: (208) 342-3829
Email: gdb@hteh.com
jash@hteh.com

Attorneys for AIA Services Corporation,
AIA Insurance, Inc., and CropUSA

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof,

Defendants.

AIA SERVICES CORPORATION, an Idaho corporation; and AIA INSURANCE, INC., an Idaho corporation,

Counterclaimants,

Case No. CV-07-00208

AFFIDAVIT OF JOLEE DUCLOS

3937

vs.)
)
REED J. TAYLOR, a single person,)
)
Counterdefendant.)
)

JoLee Duclos, being first duly sworn upon oath, deposes and says:

1. I am over the age of eighteen and competent to attest to the following matters of my own personal knowledge. I am the corporate Secretary of AIA Services Corporation and AIA Insurance, Inc. In that capacity, I am the custodian of the corporations' records pertaining to meetings of their respective shareholders and boards of directors. In 1995, I was an Assistant Secretary of AIA Services Corporation.

2. Attached hereto as Exhibits 1, 2 and 3 are the notice of shareholder meeting, an excerpt of the accompanying disclosure statement, and minutes of the shareholder meeting held on March 7, 1995.

3. Attached hereto as Exhibit 4 is a true and correct copy of minutes of the May 7, 1996 meeting of the board of directors of AIA Services Corporation.

4. Attached hereto as Exhibit 5 is a true and correct copy of undertakings executed and delivered to AIA Services Corporation and AIA Insurance, Inc. by John Taylor, Bryan Freeman and JoLee Duclos in accordance with Idaho Code Section 30-1-853.

Further your affiant sayeth naught.

JoLee Duclos

STATE OF IDAHO)
) ss.
County of ~~Ada~~ NezPerce)

SUBSCRIBED AND SWORN before me this 10th day of October, 2008.

CONNIELYNNBLEDSOE NOTARY PUBLIC STATE OF IDAHO

Connie Lynn Bledsoe
Name: Connie Lynn Bledsoe
Notary Public for Idaho
Residing at Orofino
My commission expires 10-22-2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October, 2008, I caused to be served a true copy of the foregoing AFFIDAVIT OF JOLEE DUCLOS by the method indicated below, and addressed to each of the following:

Roderick C. Bond Ned A. Cannon Smith, Cannon & Bond PLLC 508 Eighth Street Lewiston, ID 83501 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
Michael S. Bissell Campbell, Bissell & Kirby, PLLC 416 Symons Building 7 South Howard Street Spokane, WA 99201 [Attorneys for Plaintiff]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail __✓__ Email
David A. Gittins Law Office of David A. Gittins P.O. Box 191 Clarkston, WA 99403 [Attorney for Defendants Duclos and Freeman]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
Michael E. McNichols Clements Brown & McNichols 321 13th Street Lewiston, ID 83501 [Attorneys for Defendant R. John Taylor]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email
David R. Risley Randall, Black & Cox, PLLC P.O. Box 446 1106 Idaho Street Lewiston, ID 83501 [Attorneys for Defendants Connie Taylor, James Beck and Corrine Beck]	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy __✓__ Email

James J. Gatziolis
Charles E. Harper
QUARLES & BRADY LLP
500 West Madison Street, Suite 3700
Chicago, Illinois 60661-2511
[Attorneys for Crop USA Insurance]

____ U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
__✓__ Email

Gary D. Babbitt

3941

AIA SERVICES CORPORATION
One Lewis Clark Plaza
Lewiston, Idaho 83501

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

You are cordially invited to attend a special meeting of shareholders of AIA Services Corporation ("Company"). The meeting will be held at the offices of Eberle, Berlin, Kading, Turnbow & McKlveen, Chartered, 300 North Sixth Street, Second Floor, Boise, Idaho on Tuesday, March 7, 1995 at 3:00 p.m. MST.

We hope that you will be able to join us; but whether or not you plan to attend, it would be helpful if you would sign the enclosed proxy and return it in the envelope provided. Please do this immediately so that we can save time and expense of contacting you again. Returning your proxy will not prevent you from voting in person if you attend the meeting, but will assure that your vote will be counted if you are unable to attend.

The meeting will be held for the purpose of considering and voting upon certain corporate transactions necessary to implement the plan adopted by the Company's Board of Directors, subject to shareholder approval, to reorganize the Company's capitalization, ownership and operations. The proposed reorganization includes the following transactions:

1. Amendment of the Company's Articles of Incorporation ("Amendment") to authorize 735,000 shares of Series B 10% Preferred Stock, 150,000 shares of Series C 10% Preferred Stock, Series B Warrants to purchase up to 22.64% of the Company's Common Stock and Series C Warrants to purchase up to 10.4% of the Company's Common Stock.

2. Merger of RJ Holdings Corp. with and into the Company ("Merger") pursuant to the terms and conditions summarized in the enclosed Disclosure Statement; and ratification of RJ Holdings Corp. employment agreements with R. John Taylor and Richard W. Campanaro.

3. Issuance of the newly authorized Series B and Series C Preferred Stock and related Series B and Series C Warrants pursuant to a private placement conducted by J. G. Kinnard and Company, Incorporated.

4. Redemption of 500,000 of Reed J. Taylor's 613,494 shares of Company's Common Stock for $7.5 million; application of the proceeds of sale of the Series C Preferred Stock and Warrants to the $1.5 million down payment of the redemption price for Reed J. Taylor's Common Stock; issuance of the Company's $6 million promissory note for the balance of the redemption price for Mr. Taylor's Common Stock; and approval of related transactions with Mr. Taylor.

5. Application of a portion of the proceeds of sale of the Series B Preferred

3942
EXHIBIT 1

AFFIDAVIT OF JOLEE DUCLOS

Stock and Warrants to the partial or complete redemption of the outstanding Series A Stated Value Preferred Stock.

6. Contribution of at least $4.2 million of the proceeds of sale of the Series B Preferred Stock and Warrants to the Company's subsidiary, The Universe Life Insurance Company ("ULIC"); and distribution of ULIC's subsidiary, AIA Insurance, Inc., to the Company.

7. Ratification of an amendment of the Company's Bylaws to provide that the number of directors may range from seven (7) to fifteen (15) and to authorize the Board of Directors to determine the number of directors by resolution.

8. All other corporate actions necessary to recapitalize and reorganize the Company (including, without limitation, all necessary regulatory filings to obtain approval of change of control of Company's insurance subsidiaries) in accordance with the reorganization plan approved by Board of Directors.

Accompanying this Notice is a Disclosure Statement which summarizes the various transactions included in the proposed plan of reorganization and describes your right, in connection with certain of the proposed transactions, to dissent and obtain payment for your shares by complying strictly with the terms of Idaho Code Sections 30-1-80 and 30-1-81. Copies of these statutes are attached.

Please sign and date the enclosed proxy and return it promptly, so that your shares may be represented. If you attend this meeting, you may vote either in person or by your proxy.

If you have any questions, please do not hesitate to contact us.

DANIEL L. SPICKLER
Secretary

Lewiston, Idaho
February 9, 1995

Attachments
Disclosure Statement
Proxy

3943

AFFIDAVIT OF JOLEE DUCLOS

AIA SERVICES CORPORATION
One Lewis Clark Plaza
Lewiston, Idaho 83501

DISCLOSURE STATEMENT
FOR
SPECIAL MEETING OF SHAREHOLDERS
March 7, 1995

February 9, 1995

3944
EXHIBIT 2

AFFIDAVIT OF JOLEE DUCLOS

TABLE OF CONTENTS

SUMMARY OF REORGANIZATION PLAN

The Board of Directors of AIA Services Corporation ("Company"), at a meeting on January 12, 1995, adopted resolutions authorizing the Company and its management, subject to the receipt of all required Board, shareholder and regulatory approvals and authorizations, to take the first steps toward the reorganization of the Company's ownership, capitalization and operations. The plan of reorganization, which will be considered in its entirety at a special meeting of the Board to be held at 9:00 a.m. MST on March 7, 1995, includes the following transactions:

1. Amendment of the Company's Articles of Incorporation to authorize 735,000 shares of Series B 10% Preferred Stock, 150,000 shares of Series C 10% Preferred Stock, Series B Warrants to purchase up to 22.64% of the Company's Common Stock and Series C Warrants to purchase up to 10.4% of the Company's Common Stock.

2. Merger of RJ Holdings Corp. with and into the Company pursuant to the terms and conditions described in the enclosed Disclosure Statement; and ratification of RJ Holdings Corp. employment agreements with R. John Taylor and Richard W. Campanaro.

3. Sale and issuance of the newly authorized Series B and Series C Preferred Stock and related Series B and Series C Warrants pursuant to a private placement conducted by J. G. Kinnard and Company, Incorporated.

4. Redemption of 500,000 of Reed J. Taylor's 613,494 shares of Company's Common Stock for $7.5 million; application of the proceeds of sale of the Series C Preferred Stock and Warrants to the $1.5 million down payment of the redemption price for Reed J. Taylor's Common Stock; issuance of the Company's $6 million promissory note for the balance of the redemption price for Mr. Taylor's Common Stock; and approval of related transactions with Mr. Taylor.

5. Application of a portion of the proceeds of the private placement of the Series B Preferred Stock and Warrants to the partial or complete redemption of the outstanding Series A Stated Value Preferred Stock.

6. Contribution of at least $4.2 million of the proceeds of the private placement of the Series B Preferred Stock and Warrants to the Company's subsidiary, The Universe Life Insurance Company ("ULIC"); and distribution of ULIC's subsidiary, AIA Insurance, Inc., to the Company.

7. Ratification of an amendment of the Company's Bylaws to provide that the number of directors may range from seven (7) to fifteen (15) and to authorize the Board of Directors to determine the number of directors by resolution.

8. All other corporate actions necessary to recapitalize and reorganize the Company (including, without limitation, all necessary regulatory filings to obtain approval of change of control of Company's insurance subsidiaries) in accordance with plan approved by Board of Directors.

3946

The Idaho Business Corporation Act requires shareholder approval to amend the Company's articles of incorporation and to authorize the Merger. (See "Shareholder Voting Requirement To Authorize Securities ar Merger") Assuming that the Board authorizes the reorganization plan and the transactions included therein at its meeting on the morning of March 7, 1995, the Company's shareholders will be asked to consider and approve, at the special meeting of shareholders that afternoon, the reorganization plan in its entirety as well as each of the specific transactions included in the plan.

If the amendment of the articles of incorporation is approved by the Board and shareholders, the amendment will be promptly filed with the Idaho Secretary of State; and the newly authorized Series B Preferred Stock and Warrants will be issued and deposited in an escrow account upon receipt of subscriptions to purchase such securities. However, consummation of the sale of such subscribed securities is conditioned upon receipt of all required insurance regulatory approvals and simultaneous consummation of all of the transactions included in the reorganization plan. The Company expects that the reorganization plan will be implemented not later than May 1995.

REORGANIZATION PLAN

The various transactions described herein are part of a planned restructuring of the Company that will result in a change in management of the Company, a corporate reorganization, a shift in the Company's operating strategy and a material change of its ownership.

Background

AIA Services Corporation (the "Company") is an insurance holding company based in Lewiston, Idaho Currently, the Company has three direct subsidiaries, The Universe Life Insurance Company ("Universe Life"), AIA Pacific Marketing Corporation and AIA MidAmerica. Universe Life has two subsidiaries as well: Great Fidelity Life Insurance Company ("Great Fidelity") and AIA Insurance, Inc. ("AIA Insurance"). The Company's principal business is marketing insurance products and services to a captive market of over 450,000 ranchers and farmers, many of whom are members of agricultural associations ("Associations"). The Company's current products include group health and life insurance, individual life insurance, long term care insurance and college funding programs. These products are marketed through AIA Insurance and AIA MidAmerica, which had a total career agency force of over 300 licensed agents as of December 1, 1994. In 1991, AIA Insurance, the Company's general agency and third-party administrator, was reorganized as a subsidiary of Universe Life.

The Company has established relationships with over 30 state and regional Associations including the National Association of Wheat Growers ("NAWG"), American Soybean Association ("ASA") and the National Contract Poultry Growers Association. These Associations were formed through the common interests of their members to promote specific segments of the agriculture industry. They are the primary recognized organizations representing the interests of grain growers, soybean growers and poultry growers in the U.S. The Company's principal business is selling group health insurance to these Associations and their members and providing administrative services for such insurance. During 1994, approximately 17,000 Association members participated in group health programs either marketed and/or administered by the Company. Recently, the Association members have requested a variety of new products including disability insurance, annuities, retirement plans and mutual funds.

The Company provides services to the Associations through AIA Insurance, which acts as the marketer and administrator for Association trusts through which group insurance programs are made available to

Association members. The Company also acts as the marketer and administrator for a non-Association trust whose participants engage in farming, ranching or other agriculture related businesses. As part of the Company's administrative duties, the Company collects Association dues through its regular customer billing procedure, thereby creating an important link between the Company and the Associations. In return, the Associations endorse the Company and certain of its products and services, granting the Company a unique captive market.

Until recently, the Company underwrote the products it sold through its own insurance subsidiaries, The Universe Life Insurance Company ("Universe Life") and Great Fidelity Life Insurance Company ("Great Fidelity"). Insurance regulators, including the Idaho and Texas Insurance Departments, have raised issues concerning the adequacy of Universe Life's capital and surplus and the propriety of the reserving methods used for Universe Life's principal insurance product, the Group Universal Health ("GUH") Policy. (See "Company's Business-Current Products".) Regulatory constraints have impaired Universe Life's ability to dividend the earnings of AIA Insurance to the Company to service the Company's First Interstate Bank debt, the redemption of the Company's Stated Value Preferred Stock and operating expenses.

To resolve regulatory concerns, Universe Life has transferred a substantial part of its in force GUH Policy liabilities and related reserves to The Centennial Life Insurance Company ("Centennial"), with the balance of the in force GUH business expected to be transferred to Centennial during 1995; future GUH business sold and administered by AIA Insurance will be written through Centennial; and the Company will shift its focus from health insurance underwriting to its core business of marketing and administering health insurance and other insurance products covering members of farm and ranch commodity associations, their dependents and employees. As a result, Universe Life, which has historically underwritten the Company's primary product, the GUH policy, will underwrite no new insurance risk for the foreseeable future. The Company may determine, at some time, that market opportunity and capital availability support a decision to allow Universe Life to once again underwrite insurance products; however, it has no current plans to do so. Universe Life will remain as a subsidiary of the Company, retaining the appropriate state licenses to operate as an insurance company and will continue to process remaining renewal business.

In conjunction with this shift of business focus, a new senior management team led by Richard W. Campanaro (see "Management") joined the Company on January 1, 1995. Richard W. Campanaro assumed overall responsibility for the Company's agency operations. William Tarbart joined AIA Insurance, a subsidiary of the Company, as chief marketing executive. Andrew Chua has assumed the duties of chief actuarial officer of the Company. (See "Management".)

At a meeting on January 12, 1995, the Company's Board of Directors concluded that as a result of the foregoing factors, it is in the best interests of the Company and its shareholders to reorganize AIA Insurance as a direct subsidiary of the Company, in order to free the earnings of AIA Insurance from regulatory restrictions and provide the Company with operating capital to focus on and develop its insurance marketing and administration business. Universe Life has insufficient earnings, capital and surplus to allow it to distribute AIA Insurance to the Company. To enable Universe Life to distribute AIA Insurance to the Company and to effectuate the reorganization of AIA Insurance as a direct subsidiary of the Company, while satisfying insurance regulatory capital and surplus requirements, the Company must contribute approximately $4.2 million to Universe Life.

The Company has experienced difficulties in arranging its debt financing because of the existence of outstanding Stated Value Preferred Stock. The Board has concluded that acceleration of the redemption of part or all of the outstanding Preferred Stock would facilitate future debt financing by the Company, and that it is

desirable to accelerate the redemption of part or all of the Stated Value Preferred Stock (with the remaining principal redemption price of approximately $1.9 million) in order to facilitate the Company's debt and equ financing needs (including the Company's relationship with its principal lender First Interstate Bank of Idaho, N.A.).

Management has negotiated a private placement of the Company's securities by J. G. Kinnard and Company, Incorporated ("Kinnard") to raise, pursuant to the terms and conditions of an Agency Agreement dated January 12, 1995 ("Agency Agreement"), the capital necessary to restructure the Company and redeem part of all of the Stated Value Preferred Stock.

In consideration of the consent of the holder of the Stated Value Preferred Stock to the financing and reorganization transactions described herein, the Company's management has negotiated an amendment to the redemption terms set forth in the Company's Articles of Incorporation. The agreement accelerates the monthly redemption payment. In addition, if the private placement of the Company's securities (described below) is successful, the Stated Value Preferred Stock will be substantially or completely redeemed by a lump sum payment of at least $700,000 from the private placement proceeds, and the holder of the Stated Value Preferred Stock will fully release the Company from all claims.

Regulatory Approval of Change of Control

The change in ownership of the Company as a result of the reorganization of the Company must be pre-approved by certain state insurance regulators. The Company will file the necessary requests; and such approval are expected by May 1, 1995. The consummation of all of the transactions described below is conditioned upon receipt of such regulatory approvals.

Merger with Corporation Owned by Richard W. Campanaro and R. John Taylor

Immediately prior to the closing of the Private Placement, Mr. Campanaro and the Company's current President, R. John Taylor, will acquire Company Common Stock through a merger with a Delaware corporation owned by them ("Merger"). As a result of the Merger, the Company will acquire employment contracts committing Mr. Campanaro and Mr. Taylor to be employed by the Company for a certain period of time and bind them to noncompetition covenants for a reasonable period after termination of employment. (See "Management—Employment Agreements").

The Plan of Merger is currently being drafted and will be furnished to shareholders prior to commencement of the special meeting of shareholders. The terms of the Plan of Merger are summarized below:

Richard W. Campanaro and R. John Taylor are the sole shareholders of RJ Holdings Corp., a Delaware corporation, respectively owning 800,151 and 641,585 shares of RJ Holdings Corp.'s common stock. Mr. Campanaro and RJ Holdings Corp. have warranted that RJ Holdings Corp. has no liabilities; and its only assets are employment contracts with Mr. Campanaro and Mr. Taylor. Upon consummation of the Merger, each share of RJ Holdings Corp.'s common stock will be converted into and become one share of Company's Common Stock.

Consummation of the Merger is subject to satisfaction of the following conditions:

1. All representations and warranties by RJ Holdings Corp. and Richard W. Campanaro

shall be true and correct as of the Effective Date.

2. All necessary corporate actions shall have been taken to approve and file the amendment to the Company's Articles of Incorporation to authorize the Series B and Series C Preferred Stock and Warrants; and all other conditions to consummation of the sales of such securities shall have been satisfied.

3. Subscriptions to purchase at least 21.4 Units of Company's securities shall have been deposited in the Private Placement escrow account.

4. All necessary regulatory approvals of the change of control of the Company's insurance subsidiaries shall have been obtained.

The Merger will be abandoned if any of the foregoing conditions is not satisfied (unless waived by action of Company's Board of Directors) on or before May 16, 1995.

Under the Idaho Business Corporation Act, holders of Company's Common Stock have certain rights to dissent from the Merger and to demand payment of the "fair value" of their Common Stock. See "Rights of Company's Common Shareholders to Dissent From the Merger". Such rights are contingent upon strict compliance by dissenting shareholders with certain statutory procedures described below, and upon actual consummation of the Merger. If for any reason the Merger is abandoned before it becomes effective, the Company's Common Stockholders will have no right to obtain payment for their shares.

Amendment of Articles of Incorporation

The Company's articles of incorporation must be amended to authorize the Series B Preferred Stock, the Series C Preferred Stock and the respective Series B and Series C Warrants to purchase Common Stock. The amendment itself is currently being drafted and will be furnished to shareholders prior to commencement of the special meeting. The amendment will define the relative rights, preferences and other terms of the new securities, which are summarized below.

Capital Stock. The Company's Articles of Incorporation, when amended, will authorize the issuance of 5,000,000 shares of common stock (par value $1.00 per share), 200,000 shares of Series A $10 Stated Value Preferred Stock, 735,000 shares of Series B 10% Preferred Stock and 150,000 shares of Series C 10% Preferred Stock.

Common Stock. The Company is authorized to issue 5,000,000 shares of Common Stock par value $1.00 per share. All outstanding shares of Common Stock are fully paid and nonassessable. Holders of the Common Stock are entitled to one vote per share on all matters to be voted on by shareholders, including the election of directors. Holders of Common Stock of the Company will be entitled to elect all of the directors other than the director appointed by the holder of the Stated Value Preferred Stock and the director elected by the holders of Series C Preferred Stock. The holders of classes of Preferred Stock of the Company have a preference over the holders of Common Stock of the Company on the assets of the Company legally available for distribution to stockholders in the event of any liquidation, dissolution, or winding up of the affairs of the Company. In the event of any liquidation, dissolution or winding up of the affairs of the Company, holders of the Common Stock will share ratably in any assets of the Company legally available for distribution to holders of Common Stock. Holders of Series B and C Preferred Stock have a preference over the holders of Common Stock as to the payment of dividends. Holders of Common Stock have rights, share for share, to

receive cash dividends if and when declared by the Board of Directors out of funds legally available thereof after paying preferred dividends to the holders of Series B and C Preferred Stock. The Company has ne paid any dividends and does not intend to pay Common Stock dividends in the future.

Series A Stated Value Preferred Stock. The Company is authorized to issue 200,000 shares of Stated Value Preferred Stock ("Series A Preferred Stock"), without par value, of which all 200,000 shares were issued and of which approximately 190,000 shares are currently outstanding. All outstanding shares of Series A Preferred Stock are held by Reed J. Taylor's former wife and are fully paid and nonassessable. Holders of the Series A Preferred Stock are not entitled to vote on any matter to be voted on by shareholders, except that the holders of Series A Preferred Stock are entitled to elect one director to the Board of Directors of the Company. Holders of the Series A Preferred Stock have no preemptive rights to subscribe for any securities of the Company and are not entitled to receive cash dividends from the Company. In the event of any liquidation, dissolution, or winding up of the affairs of the Company, holders of the Series A Preferred Stock are entitled to a preference over the holders of Series B and C Preferred Stock and the Common Stock of the Company in an amount equal to $10.00 per share.

The Company has entered into certain covenants with the holders of the Preferred Stock which provide generally that the Company will not, without consent of the holders of the majority of the outstanding Preferred Stock (i) issue any Common Stock for less than book value, (ii) issue any additional preferred stock, (iii) guarantee or incur unsecured indebtedness in excess of an amount equal to the Company's consolidated net worth minus its goodwill, (iv) guarantee or incur any secured indebtedness exceeding 10% of an amount equal to the Company's consolidated net worth minus its goodwill, (v) guarantee or incur any secured indebtedness except for certain specified liens which arise in the ordinary course of business and certain liens incurred or assumed in connection with the acquisition of assets or corporations, (vi) terminate its corporate existenc except for a merger or consolidation in which the Company is the surviving corporation and if its consolidated net worth does not decrease as a result of such merger or consolidation, (vii) dispose of all or a material part of the Company's assets unless such disposition of assets is made at the fair market value thereof, (viii) engage in certain types of transactions with its shareholders or affiliates, (ix) permit its consolidated net worth to decrease below $2,000,000, (x) incur any indebtedness which would cause the Company's debt to equity ratio to exceed 3.6 to 1 or which would cause its debt service coverage ratio of income to current maturities on long-term debt to exceed .8 to 1.

The Company began redeeming the Series A Preferred Stock in December 1993 at the $10.00 stated value per share plus interest. As of April 30, 1995, approximately 187,500 shares of Series A Preferred Stock will remain outstanding. Upon closing of the Private Placement, least 70,000 additional shares of Series A Preferred Stock will be redeemed; and any remaining shares will be redeemed over a ten-year period. Beginning February 1, 1995, monthly redemption payments will be computed on a ten year amortization at the prime rate of the First Interstate Bank plus ¼%.

Series B and C Preferred Stock. The rights and preferences of the up to 735,000 shares of Series B 10% Preferred Stock (the "Series B Shares") and the rights and preferences of the 150,000 shares of Series C 10% Preferred Stock (the "Series C Shares") to be issued by Company shall be as follows:

Voting Rights. The holders of the Series B and C Shares will have no right to vote for any shareholder purposes. However, the holders of a majority of the Series C Shares shall have the right to elect one director to the Company's Board. Further, pursuant to a Shareholder Voting Agreemen among the Company's principal shareholders and the Agent, the Agent will have the right to designate one director to be elected to the Company's Board, for a period expiring on the earlier of the

occurrence of an Equity Offering or three years after this offering is closed.

Dividends. The Holders of the Series B and C Shares shall be entitled to receive out of any funds at any time legally available for the declaration of dividends, when and as declared by the Board of Directors, cash dividends at the rate of 10% of the liquidation payment provided in subparagraph (c) hereof per annum per share, such dividends to be payable annually each December 31. Unpaid dividends on shares of the Series B and C Preferred Stock shall be cumulative, whether or not declared. In no event shall any dividend be paid or declared, nor shall any distribution be made, on the Company's Common Stock, nor shall any Common Stock be purchased or otherwise acquired by the Company for value (other than payment of amounts due on the Company's note payable to Reed J. Taylor for redemption of his Common Stock), unless all dividends on the Series B and C Preferred Shares for all past periods shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart for payment.

Liquidation. In the event of any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, before any other distribution or payment is made to the holders of Common Stock or any other series of Preferred Stock, except the Company's Series A Preferred Stock which maintains preference over Series B and C Shares, the holders of Series B and C Shares will be entitled to receive, out of the assets of the Company legally available therefor, a liquidation payment in cash per Series B and C Share equal to $10.00 (subject to equitable adjustment in the event of any stock dividend, split, distribution, or combination with respect to Series B and C Shares) (the "Liquidation Rate"). In addition to such amount, a further amount equal to the dividends accumulated and unpaid thereon to the date of such liquidation payment will also be paid. If upon any liquidation or dissolution of the Company, the assets available for distribution are insufficient to pay the holders of all outstanding Series B and C Shares such amount per Series B and C Share, the holders of the Series B and C Shares will share pro rata in any such distribution of assets.

Redemption; Conversion. The Company may redeem the Series B and C Shares at any time; provided, however, the Series B Shares will be redeemed by the Company upon closing of an Equity Offering of its securities; and further provided that the Series C Shares may, at the option of the holders thereof, either be redeemed by the Company or converted into that number of shares of Common Stock which equals 10.4% of the Common Stock on a fully diluted basis at the later of an Equity Offering or two years after the issuance of Series B or C Shares. The redemption rate will be 100% of the Liquidation Rate if redemption occurs within two (2) years from the issuance of the first Series B or C Shares. After such two (2) year period an amount equal to 5% of the Liquidation Rate will be added to the redemption rate immediately and each 180 days thereafter so that if redemption occurs after such two (2) year period, but prior to 180 days from the end of such two (2) year period, the redemption rate will be 105% of the Liquidation Rate, if past 180 days but prior to 360 days, such escalation of the redemption rate will be 110% of the Liquidation Rate and such escalation of the Redemption Rate will continue in such manner until the Series B and C Preferred Shares are redeemed.

Adjustment of Liquidation Rate. In case the Company at any time subdivides its outstanding shares of Common Stock into a greater number of shares, whether by stock split, stock dividend or otherwise, the Liquidation Rate in effect immediately prior to such subdivision will be proportionately reduced. Conversely, in case the outstanding shares of Common Stock of the Company are combined into a smaller number of shares, whether by reverse stock split or otherwise, the Liquidation Rate in effect immediately prior to such combination will be proportionately increased.

Preemptive Rights. Holders of the Company's capital stock are not entitled to preemptive rights. A preemptive right would allow a shareholder, in certain circumstances, to acquire a pro rata portion of new issued shares of the Company's capital stock before they are offered to non-shareholders.

Series B Warrants. The Series B Warrants included as part of the Units may be transferred separately from the Shares immediately upon issuance, subject to restrictions on their transfer. The Warrants become exercisable at such time as the exercise price for the Warrants is established and remain exercisable for five years after issuance. Each Warrant allows the holder to purchase from the Company one share of Company Common Stock at a price to be determined as follows:

(a) Upon the earliest to occur of the following events prior to two (2) years from the date on which the first Series B or Series C Share is issued by the Company, then the Warrant Exercise Price will be the lesser of (1) 50% of the offering or conversion price per share of the Company's Common Stock upon the earliest of the following events ("Equity Offerings"):

(i) an offering conducted pursuant to the registration requirements of the 1933 Act in which gross proceeds of at least $5,000,000 are raised;

(ii) an offering pursuant to exemptions from registration under 1933 Act in which gross proceeds of at least $ 5,000,000 are raised; or

(iii) any securities convertible into Company Common Stock that are sold in an offering that conforms to the parameters of subparagraphs (i) and (ii) above

or (2) the conversion rate of the Series C Preferred Stock (i.e., $1.5 million divided by the number of shares of Common Stock into which the Series C Preferred Stock is converted).

(b) If an exercise price has not been established pursuant to (a) above within such two (2) year period, then the exercise price shall be established at the lesser of: (i) 75% of the Company's book value per share of Common Stock (excluding indebtedness owed to Reed J. Taylor incurred as a result of the Company purchasing certain shares of Company Common Stock from Mr. Taylor) based upon a balance sheet to be prepared as of the end of the month previous to the date two (2) years from the issuance of the first Series B or Series C Shares; or (ii) the conversion rate per share of the Series C Shares.

The number of shares of Common Stock that may be acquired upon exercise of the Series B Warrant will equal that number of shares representing 0.77% of the Company's outstanding Common Stock on a fully diluted basis (including any shares issuable upon exercise of the Series B and Series C Warrants and upon conversion of the Series C Preferred Stock). The calculation of the number of shares issuable upon exercise of the Series B Warrant will occur on the date the exercise price of the Warrant is established or two years from the date of issuance of the first Series B or Series C Shares, whichever is earlier.

The Warrant further provides that if the Company does not complete one of the Equity Offerings within two (2) years from the date the first Shares or Series C Preferred Stock is sold, the number of shares that may be purchased pursuant to the Warrant will immediately increase by 2.5% and continue to increase each 90 days thereafter by 2.5 % on a compounded basis until one of the Equity Offerings has occurred or the Warrant expires pursuant to its terms. The exercise price and the number of shares of Common Stock purchasable upon exercise of the Warrants are subject to adjustment upon the occurrence of certain events, including stock splits,

stock dividends, reclassification and combinations of Common Stock, or the merger, consolidation or disposition of substantially all the assets of the Company.

The Series B Warrant holders, as such, will have no voting, preemptive liquidation or other rights of a shareholder. The Warrant provides that the Company will use its best efforts to allow Warrant holders, and the holders of Common Stock issued pursuant to the Warrant, to have their shares of Common Stock issued or issuable pursuant to the Warrant included in certain registrations and qualifications that may be conducted by the Company. The Warrant expires if and to the extent not exercised within five years from the date the first Series B Share is sold.

Series C Warrants. The Series C Warrants have the same terms as the Series B Warrants except that the Series C Warrant exercise price is 50% of the Equities Offering price and does not include the option to exercise at the Series C Preferred Stock conversion rate within two years after the date on which the first Series C Share is issued.

Agent's Warrant. As additional consideration for its services, the Agent will receive a warrant to purchase the number of shares of Common Stock equal to 10% of the number of Shares sold in this offering to investors (i.e., 53,500 shares and 73,500 shares of Common Stock, respectively, for the minimum and maximum offering proceeds). The terms of the warrant issued to the Agent are substantially similar to the terms of the Series B Warrants, except that the Agent's Warrant exercise price is 75% rather than 50% of the Equity Offerings price and the number of shares of Common Stock purchasable upon exercise of the Agent's Warrant does not change with lapse of time.

Private Placement of Series B Preferred Stock and Warrants

As part of its reorganization plan, the Company has commenced the private offering ("Private Placement") of certain securities ("Units") through John G. Kinnard and Company, Incorporated ("Agent"). Completion of the Private Placement is contingent upon satisfaction of a number of conditions, including approval by the Company's shareholders of the amendment to the Company's Articles of Incorporation necessary to authorize the new securities. (See description of these securities under the caption "Reorganization Plan—Amendment of Articles of Incorporation—Series B and C Preferred Stock,—Series B Warrants".)

Units Description. Each Unit comprises 25,000 shares of Series B 10% Preferred Stock and a five year Series B Warrant to purchase that number of shares of Common Stock equal to 0.77% of the outstanding Common Stock of the Company at the time the Warrants are exercised (assuming full dilution including exercise of all Warrants) at an exercise price equal to the lesser of (i) 50% of the price at which the Company may sell securities in certain Equity Offerings or (ii) the conversion rate of the Series C Preferred Stock, or the lesser of 75% of book value per share or such Series C Preferred Stock conversion price if the Equity Offering has not occurred within two years. Further, if such sale of Company securities has not occurred within two years, the number of shares that may be purchased pursuant to the Warrant increases on a compound basis by 2.5% every 90 days until the Company completes the required sale of securities. The Series B Preferred Stock may be redeemed by the Company at any time, but must be redeemed if the Company completes an Equity Offering. In the event the Company does not redeem the Series B Preferred Stock within two years, the redemption price increases from 100% of the liquidation value of $10.00 per share by 5% each 180 days until redeemed.

Plan of Distribution. The Units are being offered and will be sold only to "accredited investors" (as such term in defined in Rule 501(a) of Regulation D under the 1933 Act), on a best efforts minimum/maximum

basis, exclusively by the Agent or its sub-agents. The Offering Price of the new securities is $ 250,000 per Unit. The price of the Units and the exercise price of the Warrants have been determined by negotiatic between the Company and the Agent and are not related to the assets of the Company or other financial criteria. The minimum purchase is one Unit, although fractional Units may be sold in the Company's discretion. The Agent, on behalf of the Company, is offering a minimum of 21.4 Units and a maximum of 29.4 Units. The Private Placement will terminate if $5,350,000 minimum proceeds from the sale of 21.4 Units have not been received by May 1, 1995, subject to 15-day extension upon agreement of Company and Agent. Subscribers' payments for Units will be held in an escrow account and disbursed in accordance with the terms of the Proceeds Impoundment Agreement among Resource Trust Bank (Minneapolis, Minnesota), the Company and the Agent dated January 10, 1995 (the "Proceeds Impoundment Agreement"). If commitments for the Minimum Required Financing ($5,350,000) are not received by May 1, 1995, which date may be extended by agreement of the Company and the Agent to May 16, 1995, or the other provisions of the Proceeds Impoundment Agreement are not met by such date, the securities offering will terminate; and the Subscribers' payments will be returned with accrued interest. Once commitments for the Minimum Required Financing are received and the other provisions of the Proceeds Impoundment Agreement are met, the Company may remove funds and accrued interest from the escrow account and use such funds and interest for the Company's purposes.

The Agent will receive selling commissions from the Company equal to 6% of the aggregate Unit price to investors, or $15,000 per Unit. As additional consideration for its services, the Agent will also receive the Agent's Warrant, described below, to purchase Common Stock. The number of shares of Common Stock issuable upon exercise of the Agent's Warrant is not included in calculating the ownership percentages shown in the tables on pages 16 and 17.

Use of Proceeds. The proceeds from the Private Placement will allow the Company to effect its reorganization. Pursuant to the reorganization plan, a minimum of $4.2 million of the minimum offering proceeds will be contributed to Universe Life, the Company's subsidiary, to replace AIA Insurance as an admitted asset on the books of Universe Life. AIA Insurance will then be reorganized as a direct subsidiary of the Company. Such use of proceeds from the minimum offering will resolve certain regulatory concerns of the Idaho and Texas Insurance Commissioners. In addition, $700,000 of the minimum Private Placement proceeds will be used in connection with redemption of a portion of outstanding Stated Value Preferred Stock. Any Private Placement proceeds received in excess of the minimum Private Placement proceeds will be used to redeem the outstanding shares of the Company's Stated Value Preferred Stock. If the maximum offering proceeds are obtained, the Company's Series A Preferred Stock will be redeemed in its entirety. The Company believes the minimum proceeds allow it to implement its proposed business plan outlined herein and maintain positive cash flow.

Sale of Series C Preferred Stock and Warrants

Simultaneously with the closing of the Private Placement, the Company will sell 150,000 shares of Series C Preferred Stock and Warrants for $1,500,000 to a group of investors which includes Michael W. Cashman, James W. Beck and Richard W. Campanaro, each of whom will purchase 50,000 shares of Series C Preferred Stock and Series C Warrants for an aggregate of $500,000 each. The Series C Preferred Stock has the same terms as the Series B Preferred Stock except that the Series C Preferred Stock has a right to convert into that number of shares of Common Stock which equals 10.4% of the Common Stock on a fully diluted basis prior to an Equity Offering or two years after the issuance of Series B or C Preferred Stock Series C Warrants have the same terms as Series B Warrants except that the holders of the Series B Warrants are entitled to exercise those Warrants to purchase Common Stock for an exercise price of 50% of the Equity

Offering price and do not have the option of exercising at the Series C Preferred Stock conversion rate. To fund his purchase, Mr. Campanaro will borrow $500,000 from Messrs. Beck and Cashman pursuant to a promissory note secured by a pledge of Mr. Campanaro's 50,000 shares of Series C Preferred Stock. (See "Reorganization Plan—Amendment of Articles of Incorporation—Series B and C Preferred Stock,—Series C Warrants".)

Redemption of Reed J. Taylor's Common Stock.

Simultaneously with the closing of the Private Placement, the Company will enter into an agreement with its principal shareholder, Reed J. Taylor, to repurchase 500,000 shares of Common Stock for $15 per share, or $7.5 million in the aggregate. The Company will use the $1.5 million proceeds of the sale of Series C Preferred Stock and Series C Warrants for the downpayment for such repurchase. The 500,000 shares of Common Stock will be retired to treasury; and the Company will give Mr. Taylor its interest only ten-year note payable for the $6 million balance of the repurchase price for such shares. The note will bear interest at the First Interstate Bank of Idaho prime rate plus ¼ % and will be secured in a manner to be negotiated. Principal payments on this note will be subordinated to principal payments to redeem the Stated Value Preferred Stock.

Redemption of Donna Taylor's Series A Preferred Stock.

Donna Taylor, Reed Taylor's ex-wife, owns approximately 190,000 outstanding shares of (Series A) Stated Value Preferred Stock that are currently being redeemed over 10 years at their stated value of $10.00 per share plus interest. (See "Reorganization Plan—Amendment of Articles of Incorporation—Series A Preferred Stock)". The Company will pay $700,000 of the proceeds of the Private Placement of Series B Preferred Stock and Warrants in connection with the redemption of the Series A Preferred Stock. In addition, to the extent the offering proceeds exceed the minimum offering level of $5,350,000, the Company will use the net offering proceeds in excess of the minimum to redeem the Series A Preferred Stock up to the full amount of the unpaid principal balance of the redemption price. If the offering proceeds exceed the minimum but do not reach the maximum, any unpaid principal balance of the redemption price will be paid in monthly installments based upon a ten-year amortization at prime rate plus ¼ %. (See "Reorganization Plan—Private Placement—Use of Proceeds".)

Contribution of Capital to Universe Life; Spinout of AIA Insurance.

Coincident with the closing of the Private Placement and as part of an agreement with the Idaho Department of Insurance, the Company will contribute, from the proceeds of the Private Placement, at least $4,200,000 in capital to Universe Life, and AIA Insurance will be reorganized as a direct subsidiary of the Company. This reorganization is consistent with regulatory concerns and objectives of the Company to replace AIA Insurance carrying value for Universe Life's capital purposes. (See "Company's Business-Regulation".) In addition, the reorganization of AIA Insurance as a direct subsidiary of the Company will free the earnings of AIA Insurance from regulatory restrictions and provide the Company with a source of revenue to develop its refocused insurance marketing and administration business, to service its debt financing, and to meet its obligations to redeem Reed J. Taylor's Common Stock and Donna Taylor's Stated Value Preferred Stock, and to provide a return to the Company's Common Stockholders.

Use of Proceeds Summary

THE FOLLOWING TABLE REPRESENTS THE USE OF PROCEEDS, NET OF GROSS COMMISSIONS AND ESTIMATED EXPENSES, FROM THE SALE OF UNITS AND THE SALE OF SERIES C PREFERRED STOCK OCCURRING CONCURRENTLY WITH THE CLOSING OF THE PRIVATE PLACEMENT.

	Minimum Proceeds	Maximum Proceeds
Capital Contribution to Universe Life	$ 4,200,000	$ 5,000,000
Redeem Series A Preferred Stock	700,000	1,885,000
Repurchase Mr. Taylor's Common Stock	1,500,000	1,500,000
Working Capital	29,000	24,000
Total	$ 6,429,000	$ 8,309,000

New Management.

The Company has assembled an experienced management team that will be augmented by the addition of Richard W. Campanaro, William Tarbart and Andrew Chua (the "Campanaro Team") who have extensive experience in managing and growing insurance marketing companies. The Company's management can, and has, developed new products unique to the industry; reviewed and completed strategic acquisitions; and successfully organized the Company to administer the business for the benefit of the farm Associations, policyholders, employees and shareholders.

Directors and Officers. The following table sets forth certain information with respect to each of the persons who are anticipated to be directors and executive officers of the Company upon the closing of the Private Placement.

Name	Age	Position(s)
R. John Taylor	45	Chairman of the Board and Director
Richard W. Campanaro	52	President, CEO and Director
Reed J. Taylor	58	Director
Michael W. Cashman	45	Director
Bruce Sweeney	63	Director
Albert E. Cooper	60	Director
Cumer L. Green	53	Director
James Hansen	40	Director
William Tarbart	46	President and Chief Marketing Officer, AIA Insurance, Inc.
Andrew Chua	40	Executive Vice President
Paul D. Durant II	63	President, The Universe Life Insurance Company and Great Fidelity Life Insurance Company, and Executive Vice President, AIA Services Corporation
Dan L. Spickler	46	Vice President and Secretary
Rick L Johnson	39	Vice President of Finance and Treasurer

The Company's Board of Directors currently consists of seven persons, three of whom are not

MINUTES OF A SPECIAL MEETING OF SHAREHOLDERS
OF
AIA SERVICES CORPORATION

March 7, 1995, 3:05 a.m., offices of Eberle, Berlin, et al., 300 North Sixth Street, Boise, Idaho.

A special shareholders meeting of the Corporation was called to order by President, R. John Taylor. Of the 973,333.5 shares of common stock issued and outstanding, 932,925.07 were represented either in person or by proxy. A quorum was declared present.

The following persons were present:

Stan Sturtz representing the ASOP
Stan Sturtz representing the ESOP
Paul D. Durant
Mary K. Frost
Bruce Sweeney
R. John Taylor
Reed J. Taylor
Rockwell S. Wilson
Daniel L. Spickler
JoLee K. Duclos
Richard Campanaro
Michael Cashman
Jim Hansen

John Taylor explained the proposed transactions and required Form A filings which are expected to be finalized by early May. Richard Campanaro reported on the J.G. Kinnard & Company offering. The minimum offering is expected by week's end and all "C" shares are purchased.

Rock Wilson questioned John Taylor's acquisition of 800,000 shares of common stock, which Mr. Taylor explained was compensation offered in his employment contract.

Mr. Wilson asked why current shareholders had not been given the opportunity to purchase shares. The minimum investment requirements and qualification of proposed investors was explained.

Mr. Wilson then questioned what he believed to be a 360% dilution of the stock, from $3.55 to $1.21 at book value. Mr. Taylor explained that that there would be a 50% dilution in the percentage ownership of the company.

Mr. Wilson asked what price the approximately 14,000 ESOP shares were sold at on December 31, 1993, and was told they were sold for the appraised market price.

Past problems related to the ASOP were discussed. The redemption and vesting schedules were discussed.

Mr. Wilson asked whether the CAP plan was shown as income and was advised it was, however, the company discontinued being the insurer for new business for the plan as of January 31, 1995.

Mr. Wilson asked whether a minority stockholder could be a director, and was told any person nominated by the shareholders and receiving enough votes could be a director.

3958

EXHIBIT 3

Post-merger stockholder rights were discussed and shareholders were advised there would be no piggy-back rights. The possibility of a future public offering was discussed and its affect on the minority shareholders.

John Taylor again reviewed the proposed changes, and Dan Spickler explained dissenter's rights. The shareholders were also advised that the Board of Directors had not approved the changes to the Articles of Incorporation affecting the preferred stock.

A shareholder vote was then taken. The shareholders approved the reorganization plan by a vote of 926,698.07 "yes" to 6,688.09 "no".

There being no further business, the meeting was adjourned at 3:57 p.m.

I, Daniel L. Spickler, Secretary of AIA Services Corporation, certify that this is a true and correct copy of the minutes of the shareholders meeting of the Corporation duly held March 7, 1995.

Daniel L. Spickler

AIA SERVICES CORPORATION
BOARD OF DIRECTORS MEETING
Lewiston, Idaho
May 7, 1996

The annual meeting of the Board of Directors of AIA Services Corporation was held, pursuant to notice, on May 7, 1996. Chairman, R. John Taylor, called the meeting to order at 11:15 a.m. PDT in the basement conference room of One Lewis Clark Plaza, Lewiston, Idaho.

Roll call was taken and the following Directors were present:

R. John Taylor
Reed J. Taylor
Bruce Sweeney
Al Cooper
Michael Cashman
James Beck
Cumer Green

Others in attendance were:

Paul Durant
Daniel L. Spickler
JoLee Duclos
Richard A. Riley
Scott Bell
Steve Beck

The first order of business to come before the Board was approval of the minutes for the February 2, 1996, meeting. **There was a motion and second to approve the minutes as presented. The motion passed unanimously.**

Consolidated financials were discussed, as was the sale of the subsidiary insurance companies, Universe Life and Great Fidelity.

Paul Durant discussed budgets for the first quarter and provided the board with explanations for exceeding the budget. Management salary reductions and the lay-off were discussed. Bruce Sweeney advised he wished to have a compensation committee meeting.

Mr. Durant advised the board that the company planned to enter into a new lease of an AS/400 which would substantially reduce the monthly expenses.

Sales projections were reviewed using actual first quarter figures.

3960
EXHIBIT 4

Proposals for appraisal of the ESOP were discussed. Kip O'Kelly has referred the firm of Moss Adams and its credentials were offered to the board for review. **After proper motion and second, Moss Adams was approved as the appraiser for the ESOP.**

The 401(k) profit sharing plan was discussed. If the company makes no profit, there will be no match; if up to $1 million, the match will be $.50 on the dollar. Management would like to give the employees more options to make choice on investing.

There was a motion and second to approve the treasurer's report. The motion passed unanimously.

Bruce Sweeney reported on the 401(k) Plan and WT Investment Advisers, as well as the ESOP and ASOP. **There was a motion and second to approve the Treasurer's Report. The motion passed unanimously.**

Ray Heilman was introduced and explained the transition from brokers back to captive agents. We are planning a May 20 kick-off for Rain & Hail sales. Sales graphs were reviewed.

Reed Taylor abstained from voting during the rest of the meeting.

An employment agreement with Ray Heilman for the position of Vice President was reviewed. Upon proper motion and second, the agreement was approved.

The following slate of officers was presented. **After motion and second properly made, the slate was unanimously elected.**

President/Chairman/CEO	**R. John Taylor**
Executive Vice President	**Paul D. Durant**
Vice President/Secty/Treas	**Daniel L. Spickler**
Vice President Marketing	**Ray Heilman**
Assistant Secretary	**JoLee K. Duclos**
Assistant Secretary	**Bobette Ruddell**

Problems with Centennial were discussed, including amounts owed to Universe Life. Deputy Rehabilitator, John Reuter, essentially agrees with our numbers. The issues which remain to be resolved include, but are not limited to, 1995 bonus; overpayment to AIA Insurance on the administrative allowance; APS fees; and rehabilitator's plan.

3961

Dan Spickler explained the company's default on Reed Taylor's note to the board. He also explained that negotiations had been held the day before and were continuing with Mr. Taylor's attorneys. The board agreed to let the parties work out the resolution. If no agreement can be reached, a special meeting of the board can be called.

Mike Cashman questioned whether investors had been given the opportunity to withdraw their investment and the need for a formal disclosure. It was suggested that the investors get a copy of the March 15 offering memorandum, however, currently there are several areas that are substantially different.

Dan Spickler advised the board on the status of the lawsuit filed against former director, Richard Campanaro.

There being no further business, the meeting was adjourned at 12:35 p.m.

Daniel L. Spickler, Secretary

3962

R. JOHN TAYLOR
2020 Broadview
Lewiston, ID 83501

March 1, 2007

AIA Services Corporation
P.O. Box 538
Lewiston, ID 83501

Re: Reed J. Taylor v. AIA Services Corporation, et. al.

TO: Directors and Shareholders of AIA Services Corporation

I'm writing this letter pursuant to Idaho Code § 30-1-853 and the Articles of Incorporation and ARTICLE XI of the By-Laws of the corporation. I have been named in this litigation as a defendant in my capacity as an officer and director of AIA Services Corporation.

I'm writing to affirm my good faith belief that I have met the relevant standard of conduct described in Idaho Code § 30-1-851; any conduct in my official capacity was in the best interest of the corporation and in all cases that my conduct was never opposed to the best interests of the corporation, that indemnification is permissible under the Articles of Incorporation of AIA Services Corporation and with respect to any employee plan, that I reasonably believed that my actions were in the best interests of the participants and beneficiaries of the plan.

I promise to repay any funds advanced for my defense if I am not entitled to mandatory indemnification under § 30-1-852 and it is ultimately determined under § 30-1-854 or 30-1-855 that I have not met the relevant standard of conduct described in § 30-1-851, Idaho Code.

Very truly yours,

R. JOHN TAYLOR

3963

R. JOHN TAYLOR
2020 Broadview
Lewiston, ID 83501

March 1, 2007

AIA Insurance, Inc,
P.O. Box 538
Lewiston, ID 83501

Re: Reed J. Taylor v. AIA Services Corporation, et. al.

TO: Directors and Shareholders of AIA Services Corporation

I'm writing this letter pursuant to Idaho Code § 30-1-853 and the Articles of Incorporation and ARTICLE XI of the By-Laws of the corporation. I have been named in this litigation as a defendant in my capacity as an officer and director of AIA Insurance, Inc.

I'm writing to affirm my good faith belief that I have met the relevant standard of conduct described in Idaho Code § 30-1-851; any conduct in my official capacity was in the best interest of the corporation and in all cases that my conduct was never opposed to the best interests of the corporation, that indemnification is permissible under the Articles of Incorporation of AIA Insurance, Inc., and with respect to any employee plan, that I reasonably believed that my actions were in the best interests of the participants and beneficiaries of the plan.

I promise to repay any funds advanced for my defense if I am not entitled to mandatory indemnification under § 30-1-852 and it is ultimately determined under § 30-1-854 or 30-1-855 that I have not met the relevant standard of conduct described in § 30-1-851, Idaho Code.

Very truly yours,

R. JOHN TAYLOR

Bryan Freeman
425 Crestline Circle Drive
Lewiston, ID 83501

March 16, 2007

TO: R. John Taylor
The Board of Directors & Shareholders of AIA Services Corporation
The Board of Directors & Shareholders of AIA Insurance, Inc.

Dear Sirs:

I have enclosed a copy of the following documents:

- Resignation as a Director of AIA Services Corporation; and
- Resignation as a Director of AIA Insurance, Inc.

As you are aware, the above corporations, as well as me individually, are defendants in a lawsuit filed in Nez Perce County under Case number CV-07-00208. I am writing this letter pursuant to Idaho Code §30-1-853 and the Articles of Incorporation and Bylaws of the above corporations. I have been named in this litigation as a defendant in my capacity as an officer and director of AIA Services Corporation and AIA Insurance, Inc.

I am writing to affirm my good faith belief that I have met the relevant standard of conduct described in Idaho Code §30-1-851; any conduct in my official capacity was in the best interest of the corporation and in all cases my conduct was never opposed to the best interests of the corporation; and that indemnification is permissible under the Articles of Incorporation of AIA Services Corporation and AIA Insurance, Inc.

I promise to repay any funds advanced for my defense if I am not entitled to mandatory indemnification under §30-1-852 and it is ultimately determined under §30-1-854 or §30-1-855 that I have not met the relevant standard of conduct described in §30-1-851, Idaho Code.

Sincerely,

Bryan Freeman

Bryan Freeman

JoLee K. Duclos
2345 Reservoir Road
Clarkston, WA 99403

March 16, 2007

TO: R. John Taylor
The Board of Directors & Shareholders of AIA Services Corporation
The Board of Directors & Shareholders of AIA Insurance, Inc.

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I promise to repay any funds advanced for my defense if I am not entitled to mandatory indemnification under §30-1-852 and it is ultimately determined under §30-1-854 or §30-1-855 that I have not met the relevant standard of conduct described in §30-1-851, Idaho Code.

Sincerely,

JoLee K. Duclos